

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND REGION
STATE OF WASHINGTON

CITY OF SNOQUALMIE,

Petitioner,

v.

KING COUNTY,

Respondent

and

FUTUREWISE and CITY OF SEATTLE,

Amici Curiae.

Case No. 13-3-0002

(Snoqualmie II)

**CORRECTED
FINAL DECISION AND ORDER***

****This corrected FDO makes corrections
to pages 3, 34, 49, 53, and 56 indicated
in the Order on Remand issued by the
Board on October 29, 2014.***

SYNOPSIS

On December 3, 2012, King County adopted Ordinance No.17485 updating its Comprehensive Plan (CP) and development regulations (DRs) and Ordinance Nos.17486 and 17487 revising its Countywide Planning Policies (CPPs). Ordinance Nos. 17485 and 17487 also approved amendments to the Urban Growth Area (UGA).

The County's action was challenged by the City of Snoqualmie, whose requested UGA expansion was not approved by the County. Snoqualmie asserted the County failed to incorporate and apply 2009 legislative amendments to RCW 36.70A.110(2) when it updated its CPPs, CP and DRs and when it denied Snoqualmie's UGA expansion request.

The Board determines:

- The County's process for Countywide Planning Policy adoption complies with RCW 36.70A.210, does not unlawfully delegate legislative authority to the Growth Management Planning Council, and does not violate GMA requirements for public involvement or inter-jurisdictional communication.

- The County's updated 2012 Comprehensive Plan fails to respond to the 2009 legislative amendments; the relevant portions of Ordinance 17485 are remanded for the County to revise or explain why no revision is necessary pursuant to RCW 36.70A.130(1).
- Snoqualmie did not carry its burden of showing the County's action violated RCW 36.70A.110(2) in revision of the Countywide Planning Policies, update of development regulations, or denial of the Snoqualmie I-90 UGA expansion. The remaining issues are dismissed.

I. PROCEDURAL BACKGROUND

Petitioner City of Snoqualmie challenges King County's adoption of Ordinance Nos. 17485, 17486, and 17487 adopting revised 2012 Countywide Planning Policies and the 2012 update to the King County Comprehensive Plan and development regulations.¹

Futurewise and the City of Seattle each moved for permission to file amicus briefs in support of the County. The Board granted the motions, limiting Futurewise to Legal Issues 1, 2, and 3, and Seattle to Legal Issue 3.²

The parties filed prehearing briefs and motions, as follows:

- Petitioner's Opening Brief, May 16, 2013 (Snoqualmie Opening Brief);
- King County's Response Brief, June 4, 2013 (County Response);
- Futurewise's Amicus Brief in Support of Respondent, June 4, 2013 (Futurewise Amicus);
- City of Seattle's Amicus Brief in Support of King County, June 4, 2013 (Seattle Amicus);
- Petitioner's Reply Brief, June 10, 2013 (Snoqualmie Reply).

The Hearing on the Merits was convened June 17, 2013, at the King County Courthouse. Present for the Board were Margaret Pageler, presiding officer, Cheryl Pflug

¹ In the Prehearing Order, the case schedule was coordinated with another challenge to Ordinance No. 17485 -- *CARE v. King County*, Case No. 13-3-0003 -- to avoid inadvertent inconsistencies. The cases were briefed and heard and are decided separately.

² Order Granting Amici Status to Futurewise and City of Seattle. May 10, 2013.

1 and Charles Mosher. Petitioner City of Snoqualmie appeared by its attorney Pat Anderson,
2 accompanied by Snoqualmie Mayor Matt Larson and Bob Larson, City Administrator.³
3 Respondent King County was represented by Senior Deputy Prosecuting Attorney Jennifer
4 Stacy accompanied by Darren Carnell. *Amicus* Futurewise was represented by Eric
5 Rhoades, with Tim Trohimovitch also in attendance. *Amicus* City of Seattle did not attend
6 the hearing. Leslie Sherman of Buell Realtime Reporting provided court reporting services.⁴
7

8 The hearing provided the Board an opportunity to ask questions clarifying important
9 facts in the case and providing better understanding of the legal arguments of the parties. At
10 the close of the hearing the Board asked for additional documents which were subsequently
11 provided (see, Preliminary Matters, below).

12 On appeal to Thurston County Superior Court, Case No. 13-2-01841-9, the City
13 presented new information about development on the property requested for UGA
14 expansion. The Court remanded the matter to the Board for administrative fact finding
15 pursuant to RCW 34.05.562(2)(b) concerning "the status of the UGA amendment site and
16 the Mountains to Sound Greenway."⁵ Numerous supplemental exhibits were submitted, and
17 a hearing on remand was held September 23, 2014. On October 29, 2014, the Board issued
18 its Order on Remand,⁶ supplementing the record, making additional findings of fact, and
19 requiring clarification and corrections to the Final Decision and Order based on the fact
20 finding.
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29 ³ Also in attendance with the City were city attorney's assistant Tia Patterson and management intern Patrick
30 Anderson, as well as Rodger McCollum, Superintendent of King County Public Hospital District No. 4, one of
31 the property owners in the proposed UGA expansion area. HOM Transcript at 3-4.

32 ⁴ The Board ordered a transcript of the hearing, cited herein as "HOM Transcript."

⁵ Order Granting Motion to Supplement and Remanding for Administrative Fact Finding Proceedings (June 13, 2014).

⁶ Order on Remand, Supplementing the Record, Making Findings of Fact, and Amending the Final Decision and Order, October 29, 2014.

II. JURISDICTION AND STANDARD OF REVIEW

A. Board Jurisdiction

The Board finds the Petition for Review was timely filed, pursuant to RCW 36.70A.290(2).⁷ The Board finds the Petitioner has standing to appear before the Board, pursuant to RCW 36.70A.280(2)(a) and (b) and RCW 36.70A.210(6).⁸ The Board finds it has jurisdiction over the subject matter of the petition pursuant to RCW 36.70A.280(1).

B. Presumption of Validity, Burden of Proof, and Standard of Review

Pursuant to RCW 36.70A.320(1), comprehensive plans and development regulations, and amendments to them, are presumed valid upon adoption.⁹ This presumption creates a high threshold for challengers as the burden is on the petitioners to demonstrate that any action taken by the County is not in compliance with the GMA.¹⁰

The Growth Management Hearings Board is charged with adjudicating GMA compliance and, when necessary, invalidating noncompliant plans and development regulations.¹¹ The Supreme Court explained in *Lewis County v. Western Washington Growth Management Hearings Board*:¹²

The Board is empowered to determine whether [county] decisions comply with GMA requirements, to remand noncompliant ordinances to [the county], and even to invalidate part or all of a comprehensive plan or development regulation until it is brought into compliance.

The scope of the Board's review is limited to determining whether the County has achieved compliance with the GMA only with respect to those issues presented in a timely

⁷ To the extent Snoqualmie challenges the County's long-standing GMPC structure or Four-to-One program, that challenge is time-barred, unless the Ordinances amend these provisions. See discussion of Legal Issues 3 and 4 below.

⁸ RCW 36.70A.280(2): "A petition may be filed only by: (a) The state, or a county or city that plans under this chapter; (b) a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested"

RCW 36.70A.210(6) provides: "Cities and the governor may appeal an adopted countywide planning policy to the growth management hearings board within sixty days of the adoption of the countywide planning policy."

⁹ RCW 36.70A.320(1) provides: "[C]omprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption."

¹⁰ RCW 36.70A.320(2) provides: "[T]he burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city under this chapter is not in compliance with the requirements of this chapter."

¹¹ RCW 36.70A.280, RCW 36.70A.302.

¹² 157 Wn.2d 488, 498, n. 7, 139 P.3d 1096 (2006).

1 petition for review.¹³ The GMA directs that the Board, after full consideration of the petition,
2 shall determine whether there is compliance with the requirements of the GMA.¹⁴ In
3 making its determination, the Board shall consider the criteria adopted by the Department of
4 Commerce under RCW 36.70A.190.¹⁵ The Board shall find compliance unless it
5 determines that the County's action is clearly erroneous in view of the entire record before
6 the Board and in light of the goals and requirements of the GMA.¹⁶ In order to find the
7 County's action clearly erroneous, the Board must be "left with the firm and definite
8 conviction that a mistake has been committed."¹⁷

10 In reviewing the planning decisions of cities and counties, the Board is instructed to
11 recognize "the broad range of discretion that may be exercised by counties and cities" and
12 to "grant deference to counties and cities in how they plan for growth."¹⁸ However, the
13 County's discretion is not boundless; its actions must be consistent with the goals and
14 requirements of the GMA.¹⁹ As to the degree of deference to be granted under the clearly
15 erroneous standard, the Supreme Court has stated:²⁰

17 The amount [of deference] is neither unlimited nor does it approximate a
18 rubber stamp. It requires the Board to give the [jurisdiction's] actions a
19 "critical review" and is a "more intense standard of review" than the arbitrary
20 and capricious standard.

21 ¹³ RCW 36.70A.290(1).

22 ¹⁴ RCW 36.70A.320(3).

23 ¹⁵ Procedural criteria adopted by Commerce pursuant to RCW 36.70A.190(4)(b) are found at WAC 365-196.
24 Commerce has also adopted minimum guidelines pursuant to RCW 36.70A.050 for the classification of
25 agriculture, forest, and mineral lands and critical areas; these rules are found at WAC 365-190.

26 ¹⁶ RCW 36.70A.320(3).

27 ¹⁷ *Lewis County v. WWGMHB ("Lewis County")*, 157 Wn.2d 488, 497-98, 139 P.3d 1096 (2006) (citing to *Dept.*
28 *of Ecology v. PUD District No. 1 of Jefferson County*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993)).

29 ¹⁸ RCW 36.70A.3201 provides, in relevant part: "In recognition of the broad range of discretion that may be
30 exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the
31 boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements
32 and goals of this chapter. Local comprehensive plans and development regulations require counties and cities
to balance priorities and options for action in full consideration of local circumstances. The legislature finds that
while this chapter requires local planning to take place within a framework of state goals and requirements, the
ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and
implementing a county's or city's future rests with that community."

¹⁹ *King County v. CPSGMHB*, 142 Wn.2d 543, 561, 14 P.2d 133 (2000) (Local discretion is bounded by the
goals and requirements of the GMA). See also, *Swinomish Indian Tribal Community v. Western Washington*
Growth Management Hearings Board, 161 Wn.2d 415, 423-24, 166 P.3d 1198 (2007).

²⁰ *Swinomish* at 435, n.8.

1 Thus, the burden is on the Petitioner to overcome the presumption of validity and
2 demonstrate that the challenged action taken by the County is clearly erroneous in light of
3 the goals and requirements of the GMA.

4 5 **III. PRELIMINARY MATTERS**

6 **A. Post-hearing Materials**

7 At the Hearing on the Merits the Board requested copies of the Interlocal Agreements
8 establishing the GMPC. The County filed the agreements with the Board June 26, 2013.
9 The Board takes official notice of these documents pursuant to WAC 242-03-630, and
10 admits them as follows:
11

12 **HOM Ex. 1**, Agreement among King County, the City of Seattle, and
13 Suburban Cities and Towns in King County for the Growth Management
14 Planning Council of King County (10/16/91)

15 **HOM Ex. 2**, Agreement among King County, the City of Seattle, and
16 Suburban Cities and Towns in King County for the Growth Management
17 Planning Council of King County (12/21/91)

18 **HOM Ex. 3**, Agreement among King County, the City of Seattle, and
19 Suburban Cities and Towns in King County for the Growth Management
20 Planning Council of King County (5/27/92)

21 The Board also inquired whether the Mountains to Sound Greenway was specifically
22 acknowledged or adopted in CPPs or the County Comprehensive Plan. The County
23 provided excerpts from the 2012 Comprehensive Plan, Attachment A to Ordinance 17485,
24 showing the Mountains to Sound Greenway identified in Transportation Policies at CO
25 006743, Resource Lands Policies at CO 006457-460, and Open Space Policies at CO
26 006680. For ease of reference, this packet is labeled **HOM Ex. 4**. As these materials are
27 already in the record, no ruling on supplementation is required.
28

29 The Board at hearing requested a copy of the Countywide Planning Policies
30 Framework Policies as last approved prior to the 2012 Update. The County submitted King
31 County Countywide Planning Policies, Updated December 10, 2010, excerpts EY 001120,
32 EY 001128-133, EY 001145-146, EY 001171. For ease of reference, this packet is labeled

1 **HOM Ex. 5.** As this material is already in the record, no ruling on supplementation is
2 required.

3 Snoqualmie submitted a letter commenting on the post-hearing materials (July 1,
4 2013) and the County replied with a request that the letter be stricken (July 2, 2013). The
5 Board's rules provide, in "exceptional circumstances" when the Board allows or requests
6 submission of post-hearing materials, "the opposing party shall have the opportunity to
7 respond."²¹ Snoqualmie's response is therefore allowed.

8
9 The Board notes the post-hearing materials in HOM Ex. 1-5 are all official
10 enactments of King County which are subject to official notice under WAC 242-03-630(4).
11 Further, the Board found the materials to be of substantial assistance to its decision, as
12 provided in RCW 36.70A.290(4).
13

14 **B. Order of Discussion**

15 **Section 1 – CPP Development and Adoption.** The Board begins its analysis of the
16 legal issues by addressing the King County process for CPP development and adoption.
17 Focusing on CPP Policy G-1, the Board addresses Snoqualmie's contention that this policy
18 constitutes an unlawful delegation of the County Council's legislative authority to the Growth
19 Management Planning Council (GMPC) – *Legal Issue 3*. Further, the Board considers
20 whether the County violated statutory process requirements for CPP revision -- *Legal Issue*
21 *5* -- and for the Comprehensive Plan (CP) and development regulations (DRs) to be
22 amended in consideration of the CPPs – *Legal Issues 6 and 7*. This set of questions turns
23 on the role of the GMPC in the County's CPP and UGA process, and the County's
24 concurrent adoption of the revised CPPs and the updated CP and DRs. These Legal Issues
25 allege non-compliance with RCW 36.70A.210.
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28 **Section 2. UGA Expansion Criteria.** Next the Board addresses Snoqualmie's
29 contention that the County failed to revise its CPPs – and subsequently its CP or DRs – to
30 comply with the 1990 legislative amendments to the GMA adopted in SHB 1825 – *Legal*
31 *Issue 1 and 4*. These Legal Issues allege non-compliance with RCW 36.70A.110(2).
32

²¹ WAC 242-03-610(5).

1 **Section 3. I-90 UGA Expansion Denial and Invalidity.** Finally, the Board discusses
2 Snoqualmie's contention in *Legal Issue 2* that the County violated RCW 36.70A.110(2) by
3 denying an expansion of the UGA at the Snoqualmie Parkway/I-90 Interchange requested
4 by the City pursuant to its own land capacity study. The Board then decides *Legal Issue 8 -*
5 *Invalidity.*
6

7 **IV. LEGAL ISSUES AND DISCUSSION**

8 **THE CHALLENGED ACTIONS**

9 The City of Snoqualmie challenges King County's adoption of Ordinance Nos. 17485,
10 17486, and 17487. Ordinances 17486 and 17487 relate to the Countywide Planning
11 Policies. Ordinance 17486 adopts the 2012 CPPs, representing a substantial revision and
12 reorganization for the first time since initial CPP adoption in 1992. Ordinance 17487 adopts
13 changes to the urban growth area incorporated in the CPPs. Ordinance 17485 adopts the
14 2012 update to the King County Comprehensive Plan and development regulations,
15 including the UGA changes incorporated in the CPPs.
16

17 Rather than discussing Petitioner's legal issues in numerical order, the Board first
18 addresses issues concerning the CPP – Ordinances 17486 and 17487 – arising out of
19 alleged violations of RCW 36.70A.210. Issues concerning UGA designation criteria follow,
20 involving all three ordinances and alleging non-compliance with RCW 36.70A.110(2), as
21 amended in 2009 by SHB 1825. The Board's analysis concludes with consideration of the
22 County's denial of Snoqualmie's I-90 UGA expansion request.
23
24

25 **SECTION 1 – CPP Development and Adoption**

26 **Legal Issues**

27 Issue 3. Do Policy G-1(a) and Policy G-1(b) of Attachment A to
28 Ordinances 17486 and 17487 fail to comply with RCW 36.70A.040(3) and
29 RCW 36.70A.210, because they unlawfully delegate authority vested by the
30 legislature solely in the county legislative authority to the Growth
31 Management Planning Council?

32 Issue 5. Did the process employed by King County to adopt Ordinances
17486 and 17487 fail to be guided by GMA Goal 11, RCW 36.70A.020(11),

1 Citizen participation and coordination, and fail to comply with RCW
2 36.70A.210, Countywide Planning Policies, due to lack of notice to cities and
3 the failure to hold any public hearings prior to the day of adoption?

4 Issue 6. Does Ordinance 17485 as a whole fail to comply with RCW
5 36.70A.210 because it was not developed and adopted pursuant to updated
6 countywide planning policies which did not exist at the time of its
7 development, and did not exist until after its adoption?

8 Issue 7. Do Ordinances 17486 and 17487 fail to comply with RCW
9 36.70A.210 by proceeding from the erroneous premise that the Countywide
10 Planning Policies guide "development" in all King County jurisdictions?

11 **Applicable Law and Policies**

12 Coordinated land use planning is a cornerstone of the Growth Management Act. The
13 legislative findings of **RCW 36.70A.010** state: "It is in the public interest that citizens,
14 communities, local governments, and the private sector cooperate and coordinate with one
15 another in comprehensive land use planning."

16 **RCW 36.70A.040** sets out the "summary of requirements" for GMA planning,
17 specifying, for the counties that include King County: the county "shall take actions under
18 this chapter as follows:
19

20 (a) The county legislative authority shall adopt a countywide planning
21 policy under RCW 36.70A.210; ...

22 (c) The county shall designate and take other actions related to urban growth
23 areas under RCW 36.70A.110; ...

24 **RCW 36.70A.210** contains the GMA provisions concerning countywide planning
25 policies, set out in full:

26 (1) The legislature recognizes that counties are regional governments
27 within their boundaries, and cities are primary providers of urban
28 governmental services within urban growth areas. For the purposes of this
29 section, a "countywide planning policy" is a written policy statement or
30 statements used solely for establishing a countywide framework from which
31 county and city comprehensive plans are developed and adopted pursuant
32 to this chapter. This framework shall ensure that city and county
comprehensive plans are consistent as required in RCW 36.70A.100.
Nothing in this section shall be construed to alter the land-use powers of
cities.

1 (2) The legislative authority of a county that plans under RCW
2 36.70A.040 shall adopt a countywide planning policy in cooperation with the
3 cities located in whole or in part within the county as follows:

4 (a) No later than sixty calendar days from July 16, 1991, the legislative
5 authority of each county that as of June 1, 1991, was required or chose to
6 plan under RCW 36.70A.040 shall convene a meeting with representatives
7 of each city located within the county for the purpose of establishing a
8 collaborative process that will provide a framework for the adoption of a
9 countywide planning policy. ... [Deadline for opt-in counties]

10 (b) The process and framework for adoption of a countywide planning
11 policy specified in (a) of this subsection shall determine the manner in which
12 the county and the cities agree to all procedures and provisions including but
13 not limited to desired planning policies, deadlines, ratification of final
14 agreements and demonstration thereof, and financing, if any, of all activities
15 associated therewith.

16 (c) [Governor imposes sanctions on county that fails to convene meeting
17 with cities.]

18 (d) [Governor's remedies if county and cities fail to reach agreement on
19 CPPs.]

20 (e) No later than July 1, 1992, the legislative authority of each county that
21 was required or chose to plan under RCW 36.70A.040 as of June 1, 1991,
22 ... shall adopt a countywide planning policy according to the process
23 provided under this section and that is consistent with the agreement
24 pursuant to (b) of this subsection, and after holding a public hearing or
25 hearings on the proposed countywide planning policy.

26 (3) A countywide planning policy shall at a minimum, address the
27 following:

28 (a) Policies to implement RCW 36.70A.110 [designation of urban growth
29 areas];

30 (b) Policies for promotion of contiguous and orderly development and
31 provision of urban services to such development;

32 (c) Policies for siting public capital facilities of a countywide or statewide
nature, including transportation facilities of statewide significance as defined
in RCW 47.06.140;

1 (d) Policies for countywide transportation facilities and strategies;

2 (e) Policies that consider the need for affordable housing, such as
3 housing for all economic segments of the population and parameters for its
4 distribution;

5 (f) Policies for joint county and city planning within urban growth areas;

6 (g) Policies for countywide economic development and employment,
7 which must include consideration of the future development of commercial
8 and industrial facilities;²² and
9

10 (h) An analysis of the fiscal impact.

11 (4) Federal agencies and Indian tribes may participate in and cooperate
12 with the countywide planning policy adoption process. Adopted countywide
13 planning policies shall be adhered to by state agencies.

14 (5) [Governor's sanctions for failure to adopt a compliant countywide
15 planning policy.]
16

17 (6) Cities and the governor may appeal an adopted countywide planning
18 policy to the growth management hearings board within sixty days of the
19 adoption of the countywide planning policy.

20 (7) Multicounty planning policies shall be adopted by two or more
21 counties, each with a population of four hundred fifty thousand or more, with
22 contiguous urban areas and may be adopted by other counties, according to
23 the process established under this section or other processes agreed to
24 among the counties and cities within the affected counties throughout the
multicounty region.²³

25 With Ordinance 17486 King County restated its Countywide Planning Policies,
26 including the procedures for developing and adopting future CPP amendments. Former
27 "Framework" Policies were reorganized in a new "General" section establishing agreed-
28 upon procedures. The General Policies begin with provisions for CPP amendments.
29

30 **Amendments.** While much has been accomplished, the Countywide
31 Planning Policies were never intended to be static and will require
32

²² Underlined section was added by the 2009 GMA amendments in SHB 1825.

²³ Subsection (7) provides the authority for the Multicounty Planning Policies adopted by the Puget Sound Regional Council as *VISION 2040*. County Ex. 2.

1 amendment over time to reflect changed conditions. While the formal policy
2 development is done by the Growth Management Planning Council, ideas for
3 new policies begin in a variety of areas including individual jurisdictions.
4 Policy G-1 below describes the process for amending the Countywide
5 Planning Policies.

6 **G-1** Maintain the currency of the Countywide Planning Policies through
7 periodic review and amendment. Initiate and review all amendments at the
8 Growth Management Planning Council through the process described below:

9 a) Only the Growth Management Planning Council may propose
10 amendments to the Countywide Planning Policies except for amendments to
11 the Urban Growth Area that may also be proposed by King County in
12 accordance with policies DP-15 and DP-16;

13 b) Growth Management Planning Council recommends amendments to the
14 King County Council for consideration, possible revision, and approval;
15 proposed revisions by the King County Council that are of a substantive
16 nature may be sent to the Growth Management Planning Council for their
17 consideration and revised recommendation based on the proposed revision;

18 c) A majority vote of the King County Council both constitutes approval of the
19 amendments and ratification on behalf of the residents of Unincorporated
20 King County;

21 d) After approval and ratification by the King County Council, amendments
22 are forwarded to each city and town for ratification. Amendments cannot be
23 modified during the city ratification process; and

24 e) Amendments must be ratified within 90 days of King County approval and
25 require affirmation by the county and cities and towns representing at least
26 70 percent of the county population and 30 percent of those jurisdictions.
27 Ratification is either by an affirmative vote of the city's or town's council or by
28 no action being taken within the ratification period.

29 **Statement of Facts**

30 In response to the GMA requirement to develop CPPs and establish urban growth
31 areas, in 1991 King County convened cities within the County and negotiated a series of
32 three Interlocal Agreements for collaborative planning.²⁴ The Interlocal Agreements

²⁴ HOM Ex. 1, 2, and 3.

1 established the Growth Management Planning Council (GMPC), a representative body
2 consisting of elected officials from King County, Seattle, Bellevue and the Suburban Cities
3 Association. The GMPC is chaired by the County Executive and includes five County
4 Council members.²⁵

5 The GMPC is the formal body charged with developing proposed CPPs and
6 amendments and sending recommendations to the King County Council for action.²⁶ The
7 Board's 1993 decision in *Snoqualmie v. King County (Snoqualmie I)*²⁷ determined the
8 GMPC is an advisory body to the King County Council established by interlocal agreements.
9

10 Almost all of the 39 cities in King County participate in GMPC, either directly or
11 through representation.²⁸ Many of the cities in King County participate in the GMPC
12 process through the Suburban Cities Association ("SCA").²⁹ The City of Snoqualmie is a
13 member of SCA, with its Mayor on the SCA Board of Directors.³⁰

14 In accordance with the Interlocal Agreements, the GMPC recommended and King
15 County first adopted CPPs in 1992. Subsequent amendments have been recommended
16 and adopted from time to time.

17 In 2008, following a four year process, the Puget Sound Regional Council³¹ adopted
18 VISION 2040, the updated Multicounty Planning Policies (MPPs) for King, Pierce,
19 Snohomish and Kitsap counties. The GMA requires MPPs for the Central Puget Sound
20 counties - RCW 36.70A.210(7).³²

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24 ²⁵ HOM Ex. 3, at 2.a.3.

25 ²⁶ 2012 Comprehensive Plan, Attachment A to Ordinance 17485, at 1-7.

26 ²⁷ CPSGMHB Case No. 92-3-0004, Final Decision and Order (March 1, 1993). Appended to this order as
27 Attachment A are pages 19-24 of the *Snoqualmie I* FDO.

28 ²⁸ County Response at 30.

29 ²⁹ The Suburban Cities Association has recently changed its name to Sound Cities Association.

30 ³⁰ County Response, at 30.

31 ³¹ The PSRC is designated under federal law as the Metropolitan Planning Organization and under state law
32 as the Regional Transportation Planning Organization for the four Central Puget Sound counties. County Ex.
30 2, VISION 2040, at viii.

31 ³² MPPs are part of the GMA consistency framework requiring coordination and consistency of comprehensive
32 plans of counties which have "common borders or related regional issues." RCW 36.70A.100. The Commerce
guidelines at WAC 365-196-305 state that MPPs "establish a common region-wide framework that ensures
consistency among county and city comprehensive plans adopted pursuant to RCW 36.70A.070 and county-
wide planning policies adopted pursuant to RCW 36.70A.210." See, *Friends of Pierce County v. Pierce Co.*
GMHB No. 12-3-0002c, Final Decision and Order (July 9, 2012), at 9-12, 118.

1 In 2008 King County, with the GMPC, set out to update its 1992 CPPs to ensure
2 consistency with the VISION 2040 framework.³³ The CPP revisions restructured the policies
3 into chapters matching the structure of VISION 2040 and added more recent themes such
4 as climate change and healthy living.³⁴ The CPP update workplan laid out for the GMPC in
5 2008 called for recommendations to King County Council in December 2010,³⁵ but the work
6 was delayed. On September 21, 2011, the GMPC adopted Motion 11-1 approving the King
7 County Countywide Planning Policies.³⁶ However, two issues were deferred for further study
8 and analysis - schools in the rural area, resolved by GMPC Motion 12-2 on June 6, 2012,
9 and affordable housing, resolved by GMPC Motion 12-3 on June 6, 2012.³⁷

11 King County conducts a "major" update of its Comprehensive Plan once every four
12 years, at which time substantive changes to policies, land use designation and the UGA
13 may be proposed.³⁸ 2012 was a major CP update year. By the time the GMPC final report
14 on recommended CPPs was issued, the County had launched work on the CP update.³⁹
15 Thereafter the CPP revisions and CP update were processed concurrently.

17 The CPP amendments recommended by GMPC were introduced to the King County
18 Council August 1, 2012, with a letter from County Executive Constantine.⁴⁰ The revised
19 CPPs were discussed and amended at a Council committee of the whole, November 26,
20 2012,⁴¹ and adopted after hearing on December 3, 2012. At the same meeting, and prior to
21 the vote on the revised CPPs, the County Council adopted Ordinance 17485 incorporating
22 the updated 2012 CP and DRs.

24 **Positions of the Parties**

25 Snoqualmie contends the CPP amendment process adopted in CPP G-1 fails to
26 comply with RCW 36.70A.040(3)(a) and RCW 36.70A.210(2)(e) because the County

28 ³³ County Ex. 28, CO 026347-351, Work Plan for Overall Update of CPPs.

29 ³⁴ *Id.* at CO 026349, County Ex. 18 at CO 001992

30 ³⁵ *Id.* at CO 026350.

31 ³⁶ Ordinance 17486, p. 2-3, Findings A-G.

32 ³⁷ *Id.*, see also County Ex. 23, CO 015664.

³⁸ K.C.C. 20.18.030.

³⁹ County Ex. 31, CO 007826; Ex. 32, EX 008025.

⁴⁰ County Ex. 23, CO 015663.

⁴¹ Snoqualmie Ex. 25, CO 008374; Snoqualmie Ex. 26, CO 008379.

1 Council has delegated to the GMPC its legislative authority to initiate and screen proposed
2 CPP amendments. Snoqualmie relies on the Central Board's 1993 decision in *Snoqualmie I*
3 where the Board ruled that the GMPC could not operate as a regional planning authority but
4 could only serve as advisory to the County legislative body. Snoqualmie asserts CPP G-1
5 provisions that do not allow King County to initiate CPP amendments or to act on CPP
6 amendments except on recommendation by the GMPC have "diminished the King County
7 Council's governmental powers vested in it by the GMA and constitute unlawful
8 delegation."⁴²
9

10 The County responds that *Snoqualmie I* upheld the validity of the GMPC as the
11 city/county collaborative mechanism that develops and recommends CPPs to King County
12 Council.⁴³ The County asserts CPP G-1 ensures amendments are developed out of
13 city/county consultation, while reserving authority to the County Council for rejection,
14 revision or adoption. The County argues elected city and county councils frequently rely on
15 stakeholder groups or commissions to develop or recommend legislation; this does not
16 confer governmental powers on the advisory body.⁴⁴
17

18 Amicus City of Seattle argues neither RCW 36.70A.040(3)(a) nor RCW 36.70A.210
19 restricts the manner in which CPPs are developed and proposed for adoption by a county.⁴⁵
20 Seattle points to the *Snoqualmie I* decision where the Board ruled the collaborative process
21 for CPP development selected by cities and King County "is left to the full discretion of local
22 jurisdictions"⁴⁶ "as long as the ultimate authority for adopting and amending the CPPs
23 remains with the King County Council."⁴⁷
24

25 Amicus Futurewise argues that drafting a proposed policy is not an exercise of
26 governmental powers and therefore not an unlawful delegation.⁴⁸
27
28
29

30 ⁴² Snoqualmie Opening Brief at 33.

31 ⁴³ County Response at 25.

32 ⁴⁴ HOM Transcript at 51.

⁴⁵ Seattle Amicus at 2-3.

⁴⁶ *Snoqualmie I* at 21; see portions of *Snoqualmie I* FDO appended as Attachment A.

⁴⁷ *Id.* at 24.

⁴⁸ Futurewise Amicus at 10-11.

1 **Discussion and Analysis**

2 **Legal Issue 3 – Unlawful delegation**⁴⁹

3 As a preliminary matter, the Board notes Snoqualmie failed to show why this issue
4 should be before the Board. The GMPC was established by interlocal agreements twenty
5 years ago. Its role in the development and recommendation of CPPs was upheld by the
6 Board in *Snoqualmie I*. A challenge to the County's long-standing GMPC structure is time-
7 barred, unless the Ordinance amends these provisions.⁵⁰ The County stated that its
8 framework CPPs have been reordered and renumbered in the Ordinances, but no strike-
9 through or before-after versions of the CPPs were provided by Snoqualmie indicating what
10 change, if any, was enacted in CPP G-1, the challenged policy. The burden is on petitioner,
11 first, to make a showing that the framework CPP has been changed, which Snoqualmie
12 failed to do, and then to show that the amendment was a derogation of the County Council's
13 legislative powers.
14

15
16 It was only after the Hearing on the Merits, through review of the 2010 CPPs in the
17 post-hearing materials provided by the County at the Board's request following the Hearing
18 on the Merits,⁵¹ that the Board identified the amendment. Nevertheless, in the interest of
19 resolving all issues,⁵² the Board addresses Snoqualmie's objections of unlawful delegation.

20 The GMA sets forth the process for CPP development and adoption in RCW
21 36.70A.210. RCW 36.70A.210(2)(a) requires each county to convene a meeting with
22 representatives of each city in order to establish a collaborative process to frame the
23 adoption of countywide planning policy. RCW 36.70A.210(2)(b) continues:

24
25 (b) The process and framework for adoption of a countywide planning
26 policy...shall determine the manner in which the county and the cities agree
27

28 ⁴⁹ Issue 3. "Do Policy G-1(a) and Policy G-1(b) of Attachment A to Ordinances 17486 and 17487 fail to comply
29 with RCW 36.70A.040(3) and RCW 36.70A.210, because they unlawfully delegate authority vested by the
30 legislature solely in the county legislative authority to the Growth Management Planning Council?"

⁵⁰ *Thurston County v. WWGMHB*, 164 Wn.2d 329, 344, 190 P.2d 38 (2008).

31 ⁵¹ HOM Ex. 5. Snoqualmie appears to have discovered the amendment from the same post-hearing
32 submission. See July 1, 2013, letter from Snoqualmie responding to post-hearing materials: "The diminution of
King County Council's role in amending the CPPs from F-1 Step 9 to G-1 can clearly be seen by comparing
the language of the two provisions." The burden of production in this case was on Snoqualmie to find,
compare, and present to the Board in an opening brief the amendment on which it based its challenge.

⁵² See, *Suquamish Tribe v. CPSGMHB*, 156 Wn.App. 743, 778, 235 P.3d 812 (2010).

1 to all procedures and provisions including but not limited to desired planning
2 policies, deadlines, ratification of final agreements and demonstration
3 thereof, and financing, if any, of all activities associated therewith. (emphasis
4 added.)

5 The section concludes: “the legislative authority . . . shall adopt a countywide
6 planning policy according to the process provided under this section and that is consistent
7 with the agreement pursuant to (b) of this subsection, and after holding a public hearing or
8 hearings on the proposed countywide planning policy.” (emphasis added)

9 Through interlocal agreements, King County and its cities created the GMPC as the
10 “process and framework” through which countywide planning policies, including UGA
11 amendments, are reviewed and recommended.⁵³ Snoqualmie objects that it is not a
12 signatory to the second and third Interlocal Agreements. The Board reads nothing in RCW
13 36.70A.210 requiring a county to negotiate separately with a city that has refused to enter
14 into the “process and framework” adopted pursuant to Section .210(2)(b).⁵⁴

15 The Board is familiar with the RCW 36.70A.210(2) processes adopted in each of the
16 Central Puget Sound counties – King, Pierce, Snohomish and Kitsap. Each county has
17 developed its unique city/county collaborative arrangement for considering proposed CPP
18 amendments, coordinating comprehensive plans, and reviewing UGAs.⁵⁵ Unsurprisingly, the
19 process set out in the King County interlocal agreements creating the GMPC is the most
20 structured, reflecting the number of cities (39 in King County compared to Kitsap’s four), the
21

22
23
24 ⁵³ The Commerce guidelines recommend CPPs should include policies addressing procedures by which the
25 CPPs will be reviewed and amended. WAC 365-196-305(5)(a). The guidelines also recommend counties and
26 cities establish a forum for county and city elected officials to coordinate issues associated with ongoing
27 implementation of the CPPs. WAC 365-196-305(7).

28 ⁵⁴ The statutory remedies and sanctions for non-agreement were apparently not invoked. RCW 36.70A.210(2)
29 (d).

30 ⁵⁵ See, e.g., *Palmer v. Kitsap County*, GMHB 12-3-0003, Order of Dismissal (Feb. 27, 2012) at 3 (Kitsap
31 Regional Coordinating Council, established under the Interlocal Cooperation Act, is the forum through which
32 Kitsap County and its cities develop CPPs and coordinate land use matters); *Bothell v. Snohomish County*,
CPSGMHB 07-3-0026c, Final Decision and Order (Sep. 17, 2007) at 29 (Snohomish County CPPs establish
Snohomish County Tomorrow as a merely advisory body and any binding city/county joint planning must be
established by interlocal agreement); *Halmo v. Pierce County*, CPSGMHB 07-3-0004c, Final Decision and
Order (Sep. 8, 2007) at 8-9 (Pierce County CPPs provide that all proposed UGA boundary changes must be
submitted to Pierce County Regional Council for review and formal recommendation); *Shoreline v. Snohomish*
County, CPSGMHB 00-3-0010, Order on Motion to Dismiss (Sep. 5, 2000) (Snohomish County Tomorrow is
an informal planning body with no governmental authority. The SCT planning process is not a governmental
action that may be appealed to the GMHB.)

1 range in population (from Seattle with 600,000 to tiny Skykomish and Beaux Arts with fewer
2 than 350 each), and the complexity of regional issues to be addressed. However, the Board
3 reads nothing in RCW 36.70A.210 restricting how local governments craft their city/county
4 collaborative process so long as the CPPs are ultimately adopted by the County legislative
5 authority.

6 For King County, the Interlocal Agreement that created the GMPC provided:⁵⁶

7 The GMPC shall develop and recommend to the King County Council a
8 proposed CPP. Following a public hearing the King County Council shall
9 adopt an ordinance approving a CPP.

10 The GMPC shall recommend to the King County Council the county-wide
11 planning policy in a form and with content to comply with applicable State
12 law. The recommended planning policy from the GMPC shall address issues
13 and concerns obtained from review and comment during its public review
14 process.

15 This was the language before the Board in *Snoqualmie I*. In that case, the Board
16 determined that even though the GMPC initiated and developed the CPPs and even though
17 the County Council adopted the GMPC recommendation verbatim, the CPPs were adopted
18 by the legislative authority of the County as required by the GMA.⁵⁷

19 The Interlocal Agreement also provided for future CPP amendments:⁵⁸

20 The GMPC shall devise and the parties shall comply with a process to
21 amend the CPP that is adopted. Amendments to the CPP shall be adopted
22 and ratified in the same manner as provided in Section 3 above.

23 Sometime subsequently the CPPs were amended to provide, at CPP FW-1 Step 9,
24 that the County Council as well as the GMPC could develop CPP amendments.⁵⁹

25 Amendments to the Countywide Planning Policies may be developed by the
26 Growth Management Planning Council or its successor, or by the
27 Metropolitan King County Council, as provided in this policy. (emphasis
28 added)

30 ⁵⁶ HOM Ex. 3, Interlocal Agreement, May 27, 1992, Section 3 and 4(a).

31 ⁵⁷ *Snoqualmie I* at 23: "RCW 36.70A.210(2)(a) requires that 'the legislative authority of the county shall adopt a
32 county-wide planning policy.' The record in this case is clear that ultimately it was the King County Council that
adopted the CPPs after the GMPC made a recommendation to the council."

⁵⁸ HOM Ex. 3 at 4.c.

⁵⁹ HOM Ex. 5, 2010 CPPs, EY 001133. The record does not indicate when this amendment was enacted.

1 The 2012 CPP again revises how CPP amendments are initiated. CPP G-1 now
2 provides:

3 Initiate and review all amendments at the Growth Management Planning
4 Council through the process described below:

5 a) Only the Growth Management Planning Council may propose
6 amendments to the Countywide Planning Policies except for amendments to
7 the Urban Growth Area that may also be proposed by King County in
8 accordance with policies DP-15 and DP-16;

9 b) Growth Management Planning Council recommends amendments to the
10 King County Council for consideration, possible revision, and approval;
11 proposed revisions by the King County Council that are of a substantive
12 nature may be sent to the Growth Management Planning Council for their
13 consideration and revised recommendation based on the proposed revision;

14 Snoqualmie contends CPP G-1 does not allow King County Council to initiate CPP
15 amendments, except UGA changes, or to vote on proposals that have not been forwarded
16 with a recommendation from GMPC, and this unlawfully restricts the County's legislative
17 authority. The Board notes GMPC is chaired by the King County Executive and includes five
18 County Council members, giving ample opportunity for County elected officials to initiate
19 and advocate for or against amendments as part of the collaborative process.⁶⁰ The GMPC
20 recommends amendments to the County Council for the Council to "consider, revise and
21 approve" or to remand proposed revisions to GMPC for further review – G-1(b). In the
22 present case, and contrary to Snoqualmie's assertion that the County Council has no ability
23 to initiate amendments, the record shows proposed amendments to the recommended
24 CPPs were initiated at County Council and voted on without resubmission to GMPC.⁶¹ The
25 King County Council then adopted the revised CPP through Ordinances 17486 and 17487.
26

27 As for UGA amendments, Snoqualmie's Reply complains CPP G-1 "hand[s] off the
28 County's legislative authority for UGA designations to an unauthorized 'regional planning
29 body.'"⁶² To the contrary, the Board notes CPP G-1(a) expressly provides for the County to
30
31

32 ⁶⁰ HOM Ex. 3 at 2.a.3. Note that King County gets six of the twelve total votes on the GMPC.

⁶¹ County Ex. 20 (CO 016770); Ex. 21 (CO 008240); Ex. 18 (CO 010999-1101).

⁶² Snoqualmie Reply, at 18.

1 initiate UGA amendments. CPP policy DP-14 calls for a UGA review at least every ten years
2 and provides, based on criteria set forth in DP-15 and DP-16,⁶³ King County may propose
3 UGA boundary changes and forward them to GMPC for review and recommendation. DP-15
4 allows UGA amendments only when the proposed expansion is first taken under review by
5 the County as part of its comprehensive plan docket, the County then submits the proposal
6 to GMPC for review and recommendation, and the County votes to approve or deny the
7 proposal.⁶⁴ Even if initiation of amendments were an exclusive legislative prerogative, which
8 Snoqualmie has not proved, the CPP does not delegate the authority to GMPC for UGA
9 amendments.
10

11 Snoqualmie relies on four appellate court rulings which it asserts uphold the principle
12 that GMA planning is exclusively within the legislative authority of city and county
13 governments. However, none of the cases stands for the proposition that drafting or
14 initiating a policy or amendment is an essential governmental prerogative that cannot be
15 delegated. *Snohomish County, Brisbane*, and *1000 Friends*⁶⁵ challenged citizen referenda,
16 where the issue was whether voter initiatives could overturn GMA measures adopted by
17 local legislative authorities. The *Snohomish County* ruling specifically addressed the
18 adoption of Countywide Planning Policies. The County's CPPs, adopted by the County
19 Council on recommendation from Snohomish County Tomorrow, were challenged by a
20 citizen referendum. Pointing to the statutory language which specifies countywide planning
21 policies must be adopted by "the legislative authority of the county," RCW 36.70A.040(3)(a)
22 and RCW 36.70A.210(2)(a), the Court held the power of adopting CPPs could not be
23 delegated to the citizenry.⁶⁶
24
25
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27

28 ⁶³ DP-16 is discussed further below under Legal Issue 1.

29 ⁶⁴ The 2012 CP specifies no proposed UGA expansion will be forwarded to GMPC unless included in the
30 scoping motion, or an area zoning study was included in the public review draft, or the hearing examiner
31 process for site specific map amendments has been completed. RP-203, Attachment A to Ordinance 17485, at
32 1-8.

⁶⁵ *Snohomish County v. Anderson*, 123 Wn.2d 151, 868 P.2d 116 (1994); *Brisbane v. Whatcom County*, 125
Wn.2d 345, 884 P.2d 1326 (1994); *1000 Friends of Washington v. McFarland*, 159 Wn.2d 165, 149 P.3d 616
(2006).

⁶⁶ *Brisbane* and *1000 Friends* dealt with referenda seeking to roll back critical areas protections, the Court
finding the GMA public participation requirements amply protected the public interest.

1 The *Postema* case⁶⁷ also challenged Snohomish County's adoption of CPPs
2 developed by Snohomish County Tomorrow. Postema raised the unlawful delegation claim,
3 but the court dismissed without reaching the merits because the plaintiff lacked standing. In
4 dicta, the *Postema* court rejected the contention that the Snohomish County "city-county
5 meeting group" [Snohomish County Tomorrow] possesses governmental powers triggering
6 application of the one-person one-vote principle, saying: "the meeting group which the
7 statute requires the county council to convene is not authorized to impose taxes, pass any
8 regulations punishable by fines, issue bonds, exercise police powers, or condemn property.
9 Instead, it is only authorized to establish a collaborative process for the development of a
10 county-wide planning policy."⁶⁸

11
12 None of these cases suggests that agreeing to a collaborative process for initiation
13 and screening of subsequent CPP amendments is an unlawful infringement of the County
14 Council's legislative powers.

15
16 In sum, RCW 36.70A.040(3)(a) and RCW 36.70A.120(2)(e) require that CPPs be
17 adopted by the County legislative authority. But nothing in the GMA or the authorities cited
18 to the Board prohibits King County from using the collaborative process agreed to under
19 RCW 36.70A.210(2) to initiate and recommend CPP amendments. Indeed, the statute
20 states the city/county "process and framework" agreed to under RCW 36.70A.210(2) shall
21 determine procedures for agreement on all provisions "including ... desired [i.e., proposed,
22 recommended] planning policies." King County's CPP G-1(c) clearly reserves final adoption
23 of the CPPs to the County, stating: "A majority vote of the King County Council constitutes
24 approval of the amendments."

25
26 **The Board finds** the County's adoption of CPP G-1 does not violate RCW
27 36.70A.210(2) or .040(3). Legal Issue 3 must be **dismissed**.

28
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32 ⁶⁷ *Postema v. Snohomish County*, 83 Wn. App. 574, 922 P.2d 176 (1996), rev den. 131 Wn.2d 1019, 936 P.2d 417 (1997).

⁶⁸ *Postema* at 582 (emphasis added).

1 **Legal Issue 5 – Required CPP Process**⁶⁹

2 Snoqualmie contends King County's adoption of the CPPs violated the procedural
3 requirements of GMA Goal 11 and RCW 36.70A.210(2). Snoqualmie points out the statutory
4 requirement for development and adoption of CPPs begins with the County legislative
5 authority convening "a meeting with representatives of each city within the county" – RCW
6 36.70A.210(2)(a) – and ends with adoption of CPPs by the legislative authority "after
7 holding a public hearing or hearings" – RCW 36.70A.210(2)(e). Snoqualmie argues the
8 County's use of the GMPC representative membership rather than contacting "each city"
9 was non-compliant. Further, the County's reliance on GMPC for its public outreach was
10 insufficient, Snoqualmie contends, pointing out the County Council held only a single public
11 hearing on the revised CPPs the day the Ordinances were adopted.
12

13 Snoqualmie documents its repeated unsuccessful requests to County staff for
14 information about the County Council's schedule for consideration and action on the CPPs
15 following referral from the GMPC.⁷⁰ Snoqualmie asserts the only notice of the day-of-action
16 public hearing was the notation "Public Hearing Required" under the Ordinance 17487
17 agenda item on the County Council's agenda for its December 3, 2012, meeting.⁷¹
18

19 King County responds that a public outreach program was developed at the
20 beginning of the CPP revision process in 2010, involving public meetings, web-based
21 communication, stakeholder engagement, and other communication opportunities.⁷² As part
22 of this program there were two public meetings in addition to the public comment periods
23 held before each of the ten GMPC meetings, as well as the final public hearing at the
24 County Council, prior to CPP adoption.⁷³ The outreach program incorporated and relied on
25 the contact lists, websites, and other communications facilities of the cities and County.
26
27

28 ⁶⁹ Issue 5. "Did the process employed by King County to adopt Ordinances 17486 and 17487 fail to be guided
29 by GMA Goal 11, RCW 36.70A.020(11), Citizen participation and coordination, and fail to comply with RCW
30 36.70A.210, Countywide Planning Policies, due to lack of notice to cities and the failure to hold any public
31 hearings prior to the day of adoption?"

32 ⁷⁰ Snoqualmie Ex. 27, EX 000646-649; Ex. 28, CO 020534; Ex. 29, CO 020533; Ex. 30, CO 020524; Ex. 31,
CO 013233; with County staff responses Ex. 32, CO 020516-517; Ex. 33, EX 000650, none providing
scheduling information.

⁷¹ Snoqualmie Ex. 26, CO 008379.

⁷² County Ex.22, EX 001057-58, Sept. 22, 2010, GMPC Staff proposed public outreach program.

⁷³ County Ex.23, CO 015663; Ex.24, CO 020583; Ex.25, EY 000372.

1 Special stakeholder groups were convened for input, for example, to address the rural
2 school siting and affordable housing issues.⁷⁴ King County points out it maintained a
3 website during the CPP revision process and through the website accepted public
4 comments and posted them for review.⁷⁵

5 First, the Board notes that the statutory process for CPP adoption set forth in RCW
6 36.70A.210(2) by its own terms applies to the original CPPs, not amendments.⁷⁶ Subsection
7 (2)(a) begins: "No later than 60 calendar days from July 16, 1991, the legislative authority of
8 [the county] shall convene a meeting with representatives of each city." Subsection (2)(e)
9 concludes: "No later than July 1, 1992, the legislative authority of each county . . . shall
10 adopt a countywide planning policy . . . after holding a public hearing or hearings." It is only
11 Subsection (2)(b) that arguably governs the process for subsequent CPP revisions:
12

13 (2)(b) The process and framework for adoption of a countywide planning
14 policy specified in (a) of this subsection shall determine the manner in which
15 the county and the cities agree to all procedures and provisions including but
16 not limited to desired planning policies, deadlines, ratification of final
17 agreements and demonstration thereof, and financing, if any, of all activities
18 associated therewith.

19 RCW 36.70A.210(2)(b) provides that the process agreed to by the county and its
20 cities "shall determine" how the county and city subsequently agree to "all procedures and
21 provisions including . . . desired planning policies [and] ratification of final agreements. . . ."
22 In King County the process agreed to was the GMPC collaboration. In the Interlocal
23 Agreement, King County and its cities agreed the GMPC would conduct a "public review
24 process" for CPP development:⁷⁷

25 The recommended planning policy from the GMPC shall address issues and
26 concerns obtained from review and comment during its public review
27 process.
28
29

30 ⁷⁴ HOM Transcript, at 51.

31 ⁷⁵ County Ex.23, CO 015663.

32 ⁷⁶ Snoqualmie agrees: "RCW 36.70A.210 expressly addresses only the process for the initial adoption of
countywide planning policies, and does not explicitly address the process for updates." Snoqualmie Opening
Brief at 39.

⁷⁷ HOM Ex. 3, at 4.a.

1 For the CPP revisions here, the GMPC established and conducted a public outreach
2 program which included County communications facilities.⁷⁸ Snoqualmie hasn't alleged the
3 County failed to follow the procedures agreed to in the Interlocal Agreements or the specific
4 outreach process established by the GMPC for these revisions.

5 Snoqualmie cites no authority requiring additional public process for CPP
6 amendment. Snoqualmie cites GMA Goal 11 – Public Participation – “Ensure coordination
7 between communities and jurisdictions to reconcile conflicts.” However, the GMA planning
8 goals guide the development and adoption of comprehensive plans, not CPPs.⁷⁹ In *Palmer*
9 *v. Kitsap County*,⁸⁰ the Board dismissed a citizen challenge to Kitsap County's adopted
10 CPPs. In rejecting the petitioners' assertion of participation standing, the Board pointed out
11 the GMA notice and public participation provisions relied on by petitioners were all directed
12 to development and amendment of comprehensive plans, not CPPs.⁸¹

13
14 Finally, it is evident that Snoqualmie was in fact aware of the CPP revision process
15 as it submitted comments and testified at GMPC public hearings.⁸² Snoqualmie also
16 conveyed its concerns to County Council members in a letter shortly before the Council
17 Committee of the Whole met to consider the CPPs.⁸³ Additionally, there was an opportunity
18 to address the full County Council at the public meeting prior to CPP adoption.⁸⁴ Indeed, the
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23 ⁷⁸ County Ex. 22, EX 001057-58; Ex. 23, CO 015663.

24 ⁷⁹ RCW 36.70A.020(preamble): “The following goals . . . shall be used exclusively for the purpose of guiding
the development of comprehensive plans and development regulations.”

25 ⁸⁰ GMHB Case No. 12-3-0003, Order of Dismissal (Feb. 27, 2012), at 7-8.

26 ⁸¹ As to notice, RCW 36.70A.035 provides: “The public participation requirements of this chapter shall include
notice procedures that are reasonably calculated to provide notice ... **of proposed amendments to**
comprehensive plans and development regulations.”

27 RCW 36.70A.130(2) also mandates a public participation program: “Each county and city shall establish and
28 broadly disseminate to the public a public participation program consistent with RCW 36.70A.035 and .140
that identifies procedures and schedules whereby **updates, proposed amendments, or revisions of the**
29 **comprehensive plan** are considered by the governing body of the county or city”

30 RCW 36.70A.140 requires a public participation program: “Each county and city ... shall establish and
31 broadly disseminate to the public a public participation program identifying procedures providing for early and
32 continuous public participation in the **development and amendment of comprehensive land use plans and**
development regulations implementing such plans....”

⁸² See, e.g., County Ex.26, EX 001040-46; see also Ex.27, CO 026169.

⁸³ Snoqualmie Ex. 6, SN 000013, Pat Anderson e-mail letter to County Council members, Nov. 12, 2012.

⁸⁴ County Response, at 30.

1 GMPC and County officials incorporated some of Snoqualmie's comments into the CPP
2 revisions but rejected others.⁸⁵

3 In sum, **the Board finds** Snoqualmie has not demonstrated that King County failed
4 to comply with any GMA procedural requirements for amendment or revision of CPPs. The
5 GMA is not to be liberally construed.⁸⁶ The Board cannot find a jurisdiction out of
6 compliance for violating the "spirit and requirements of RCW 36.70A.210" as Snoqualmie
7 requests,⁸⁷ only for violating "goals and requirements." Here, no violation of procedural
8 requirements has been shown. Legal Issue 5 must be **dismissed**.
9

10 ***Legal Issue 6 – Comprehensive Plan not developed pursuant to CPPs***⁸⁸

11 Snoqualmie contends the revised CPPs (Ordinances 17486 and 17487) were
12 adopted *after* the updated 2012 CP and DRs (Ordinance 17485) and therefore the GMA
13 requirement that the CPPs guide the development of comprehensive plans and
14 development regulations was violated. Snoqualmie relies on RCW 36.70A.210(1) which
15 defines "countywide planning policy" as "a written policy statement or statements used
16 solely for establishing a countywide framework from which county and city comprehensive
17 plans are developed and adopted pursuant to this chapter. This framework shall ensure that
18 city and county comprehensive plans are consistent as required in RCW 36.70A.100."
19 (emphasis added)
20

21 The County contends it adopted Ordinances 17485, 17486, and 17487 as a package,
22 as is often done with related GMA enactments to ensure consistency.⁸⁹ The County
23 explains the CPP adoption was delayed in order to resolve issues concerning rural schools
24 and affordable housing, but asserts the CPP provisions relevant to the issues in this case
25

26
27 ⁸⁵ See discussion of Legal Issue 1 below. Compare, *Snohomish County Farm Bureau v. Snohomish County*,
28 GMHB No. 12-3-0010, Order on Motions (Jan. 31, 2013), at 7-8 (Where the County Council discussed and
voted on the Petitioner's proposed amendment, though it was rejected, Petitioner could not claim violation of
GMA requirement to consider public comments).

29 ⁸⁶ *Thurston County*, 164 Wn.2d at 342; *Skagit Surveyors and Engineers, LLC v. Skagit County*, 135 Wn.2d
30 542, 558, 958 P.2d 962 (1998) ("The power of an administrative tribunal to fashion a remedy is strictly limited
by statute.").

31 ⁸⁷ Snoqualmie Opening Brief at 40.

32 ⁸⁸ Issue 6. "Does Ordinance 17485 as a whole fail to comply with RCW 36.70A.210 because it was not
developed and adopted pursuant to updated countywide planning policies which did not exist at the time of its
development, and did not exist until after its adoption?"

⁸⁹ County Response at 31-32.

1 were adopted and recommended by the GMPC in September 2011, well before the updated
2 CP and DR proposal was finalized, and were considered by the Council in developing and
3 adopting its 2012 CP.

4 The Board reads Snoqualmie's objection as two-fold. First, from the sequential
5 numbering of ordinances on the County Council's December 3, 2012, agenda, the revised
6 2012 CPPs (Ordinances 17486 and 17487) were not adopted until after adoption of the
7 updated 2012 Comprehensive Plan (Ordinance 17485).⁹⁰ No party cited to the Board any
8 authority for the proposition that, in a package of related legislation, voting on the
9 ordinances in the wrong order is a fatal flaw.⁹¹

11 More significantly, Snoqualmie argues the CP and DR amendments were not
12 substantively developed from the revised CPPs, as the CPP recommendations were not
13 formally introduced to the County Council until August 2012, when the CP update was well
14 underway.⁹² The Board looks to Ordinance 17485 to determine whether the CP update was
15 guided by the revised CPPs. The 2012 Comprehensive Plan is Attachment A to the
16 Ordinance. In an Introductory section, the Plan describes the MPPs and CPPs and explains:

18 Each of these plans [MPPs and CPPs] has recently undergone major
19 revision, informing the 2012 update to the King County Comprehensive
20 Plan.⁹³ (emphasis added)

21 More specifically concerning countywide planning, the 2012 CP explains the GMPC
22 "approved a major overhaul and update to the Countywide Planning Policies in 2011"
23 providing "broad direction" to the County's Comprehensive Plan.⁹⁴ Thus the CP update
24 acknowledges and references the revised CPPs.

26 The Board notes the latest CPP recommendations from GMPC concerned rural
27 school siting and affordable housing. The Board looked to see whether the 2012
28 Comprehensive Plan had in fact been updated to be consistent with the revised CPP for

29
30 ⁹⁰ Snoqualmie Opening Brief at 41.

31 ⁹¹ At the hearing on the merits, the County referenced municipal law making adopted ordinances effective at
32 midnight on the day of adoption, so that the order of voting at a particular meeting has no legal significance.
HOM Transcript at 73.

⁹² Snoqualmie Opening Brief at 42.

⁹³ Ordinance 17485, Attachment A, 2012 Comprehensive Plan at I-4 (emphasis added).

⁹⁴ *Id.* at I-5, n. 1.

1 rural schools. Rural school siting is addressed in the CPPs at Rural Area Development
2 Policy DP-50 which adopts the March 31, 2012, report of the School Siting Task Force.⁹⁵
3 Then reviewing amendments to the 2012 Comprehensive Plan, the Board finds the CPP
4 provisions developed by the School Siting Task Force for rural schools are explicitly
5 incorporated in Rural Lands policies R-326 and R-327.⁹⁶ Thus in the case of rural school
6 siting, it is clear the County's comprehensive plan amendments were developed in
7 consideration of and consistent with the CPP revisions, notwithstanding the concurrent
8 adoption of both ordinances.
9

10 Snoqualmie does not identify any specific provisions of Ordinance 17485 it believes
11 should have been, but were not, revised in light of the updated CPP framework of
12 consistency. It fails to meet its burden of proof on this question.
13

14 This Board has previously rejected the assumption that local elected officials are
15 unaware of planning proposals moving forward simultaneously in separate planning
16 processes.⁹⁷ Adopting components of the GMA planning requirements concurrently may
17 serve to increase consistency and coordination. In the present case, the County Executive,
18 five County Council members and staff were engaged in the GMPC process for CPP
19 revisions. The revisions relevant to Snoqualmie's dispute were adopted by the GMPC in
20 September 2011, at the outset of the County's Comprehensive Plan update process and
21 over a year before Ordinance 17485 adoption. The 2012 Comprehensive Plan explicitly
22 references and incorporates 2012 CPP provisions, demonstrating the Plan was "developed
23 and adopted" from the framework of the CPPs as required by RCW 36.70A.210(1).
24
25

26
27 ⁹⁵ Ordinance 17486, 2012 CPP, p. 28.

28 ⁹⁶ See Attachment A to Ordinance 17485 at 3-25, amending Rural Lands policies R-326 and R-327, and
29 Attachment J, Technical Appendix Q, King County School Siting Task Force report March 31, 2012.

30 ⁹⁷ *Bothell v. Snohomish County*, CPSGMHB Case No. 07-3-0026c, Final Decision and Order (Sept. 17, 2007)
31 at 22, finding inconsistency between land use amendments and the TIP adopted a month earlier: "Granted the
32 CFE and Docketing process will not absolutely coincide, but each must be considered and adopted in light of
the other. Given the County's deliberative process and the extent of public participation, the County staff that
prepares the TIP and the County Council that adopts it cannot pretend ignorance of matters under
consideration in a docketing process that is virtually concurrent. Snohomish County is quite capable of
amending various portions of its plans and regulations concurrently, when necessary to accommodate a
desired project. Here, however, the County Council failed to coordinate the proposed rezones and the
required transportation improvements."

1 **The Board finds and concludes** neither the sequential numbering nor the
2 concurrent adoption of Ordinances 17485, 17486, and 17487 violates RCW 36.70A.210(1).
3 Legal Issue 6 is **dismissed**.
4

5 ***Legal Issue 7 – Recital 3 to CPP Ordinances***⁹⁸

6 Recital 3 to Ordinances 17486 and 17487 states:

7 The CPPs establish a framework for guiding development in all King County
8 jurisdictions.

9
10 Snoqualmie asserts this statement indicates the intent of the County and GMPC “to use the
11 CPPs to dictate what development could occur in Snoqualmie.”⁹⁹ Snoqualmie cites the
12 Board’s decision in *Snoqualmie I* striking down CPP provisions found to interfere with the
13 land use powers of cities by directly controlling specific development regulations.¹⁰⁰ The
14 County responds that Recital 3 does not have the regulatory effect that brings it within the
15 Board’s review.¹⁰¹

16 The Board concurs with the County. Legislative findings and recitals are not the
17 enacted ordinance itself and do not provide an independent basis for a finding of non-
18 compliance.¹⁰² Even the legislative declarations codified in the GMA itself do not provide an
19 independent basis for determining non-compliance.¹⁰³ In most city and county ordinances,
20 recitals or “whereas” clauses are employed to provide background information or to address
21 the purpose of an enactment.¹⁰⁴ It is the effect of the ordinance and the controls the
22 ordinance imposes, in relationship to the goals and requirements of the GMA, which lie
23
24
25

26
27 ⁹⁸ Legal Issue 7. “Do Ordinances 17486 and 17487 fail to comply with RCW 36.70A.210 by proceeding from
28 the erroneous premise that the Countywide Planning Policies guide “development” in all King County
jurisdictions?”

29 ⁹⁹ Snoqualmie Opening Brief at 45.

30 ¹⁰⁰ *Snoqualmie I* at 29, 30, striking LU-59 and LU-27 from the 1992 CPPs.

31 ¹⁰¹ County Response at 33-34

32 ¹⁰² See e.g., *Judd v. AT&T*, 152 Wn.2d 195, 203, 95 P.3d 337 (2004); *Aripa v DSHS*, 91 Wn.2d 135, 139, 588
P.2d 185 (1978)

¹⁰³ See *Keesling v. King County*, CPSGMHB Case No. 05-3-0001, Final Decision and Order (July 5, 2005) at
27, dismissing a legal issue alleging violation of RCW 36.70A.011, the legislative findings on rural lands.

¹⁰⁴ Local Ordinances for Washington Cities and Counties, Municipal Research & Services Center of
Washington, May 2000, Report No. 50.

1 within the jurisdictional purview of the Board. Thus the Board has declined to base non-
2 compliance on findings in local enactments that do not alter the effect of the enactment.¹⁰⁵

3 The legal effect of King County's ordinances adopting the 2012 CPPs is stated in
4 RCW 36.70A.210(1):

5 [A] "countywide planning policy" is a written policy statement or statements
6 used solely for establishing a countywide framework from which county and
7 city comprehensive plans are developed and adopted pursuant to this
8 chapter. This framework shall ensure that city and county comprehensive
9 plans are consistent as required in RCW 36.70A.100. Nothing in this section
10 shall be construed to alter the land-use powers of cities.

11 King County's abbreviation of this provision to read that the CPPs "establish a
12 framework for guiding development in all King County jurisdictions" may not be technically
13 accurate but the recital does not convert the adopted CPPs from a planning framework to a
14 regulatory instrument violative of RCW 36.70A.210. Legal Issue 7 is **dismissed**.

15 Conclusion

16 The Board finds and concludes Snoqualmie has failed to carry its burden of proving
17 King County's adoption of Ordinance Nos. 17486 and 17487 violates the countywide
18 planning policy provisions of RCW 36.70A.210. **The Board finds** CPP G-1 does not
19 unlawfully delegate County legislative authority to the GMPC. **The Board finds** the County's
20 CPP revision process was consistent with RCW 36.70A.210(2)(b) and did not violate other
21 GMA requirements for notice or inter-jurisdictional communication. Legal Issues 3 and 5 are
22 **dismissed**.
23

24 **The Board finds** neither the recitals in the Ordinances nor the concurrent adoption of
25 the revised CPPs and the updated 2012 CP and DRs violates RCW 36.70A.210(1). Legal
26 Issues 6 and 7 are **dismissed**.
27

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31 ¹⁰⁵ *Petso II v. City of Edmonds*, CPSGMHB Case No. 09-3-0005, Final Decision and Order (Aug. 17, 2009), at
32 22: "The Board concludes that the findings in Edmonds Resolution 1185 simply clarified the ordinance without
changing its effect." See also *Halmo v. Pierce County*, CPSGMHB Case No. 07-3-0004c, Final Decision and
Order (Sep. 28, 2007), at 26: "The proposed [finding] change . . . clarifies language of a proposed ordinance
or resolution without changing its effect."

1 **SECTION 2 – UGA Expansion Criteria**

2 **Legal Issues**

3 Issue 1. Do the challenged actions fail to be guided by GMA Goal 1,
4 RCW 36.70A.020(1), Urban growth, and fail to comply with RCW
5 36.70A.110(2) and applicable law by failing to address the requirement of
6 RCW 36.70A.110(2) as amended by SHB 1825 that each city must have
7 sufficient land capacity to accommodate the broad range of non-residential
8 uses that will accompany its projected urban growth?

9 Issue 4. Do the challenged actions fail to comply with RCW 36.70A.110
10 because they require the dedication of four acres of open space for each
11 acre added to the urban growth area as a condition of the County's
12 complying with the GMA requirement that each city must have sufficient land
13 capacity to accommodate the broad range of non-residential uses that will
14 accompany its projected urban growth?

14 **Applicable Law and Policies**

15 In 2009, the legislature adopted SHB 1825 making three amendments to the GMA as
16 follows (language added by the Amendments is underlined):

17 **RCW 36.70A.110(2)** Based on the growth management population
18 projection made for the county by the office of financial management, the
19 county and each city within the county shall include areas and densities
20 sufficient to permit the urban growth that is projected to occur in the county or
21 city for the succeeding twenty year period, except for those urban growth
22 areas contained exclusively within a national historical reserve. As part of
23 this planning process, each city within the county must include areas
24 sufficient to accommodate the broad range of needs and uses that will
25 accompany the projected urban growth including, as appropriate, medical,
26 governmental, institutional, commercial, service, retail and other
27 nonresidential uses.

28 **RCW 36.70A.115** Counties and cities that are required or choose to plan
29 under RCW 36.70A.040 shall ensure that, taken collectively, adoption of and
30 amendments to their comprehensive plans and/or development regulations
31 provide sufficient capacity of land suitable for development within their
32 jurisdictions to accommodate their allocated housing and employment
growth, including the accommodation of, as appropriate, the medical,
governmental, educational, institutional, commercial, and industrial facilities
related to such growth, as adopted in the applicable countywide planning
policies and consistent with the twenty year population forecast from the
office of financial management.

1 **RCW 36.70A.210(3)** A countywide planning policy shall at a minimum
2 address the following: ... (g) Policies for countywide economic development
3 and employment, which must include consideration of the future
4 development of commercial and industrial facilities.

5
6 The statutory context for these amendments is the GMA process and criteria for
7 delineating urban growth areas as a means to ensure that urban development is directed
8 into urban areas to reduce sprawl. **RCW 36.70A.020(1) and (2)**, the first two planning goals
9 of the GMA provide:

- 10 (1) Urban growth. Encourage development in urban areas where adequate
11 facilities and services exist or can be provided in an efficient manner.
12 (2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped
13 land into sprawling low-density development.

14 At the outset of GMA planning, pursuant to **RCW 36.70A.040(3)**, “(a) the county
15 legislative authority shall adopt a countywide planning policy under RCW 36.70A.210”¹⁰⁶
16 and “(c) the county shall designate and take other actions related to urban growth areas
17 under RCW 36.70A.110.” (emphasis added)

18 Provisions for Urban Growth Area designation are set forth in **RCW 36.70A.110**.
19 Subsection (1) begins: “Each county shall designate an urban growth area or areas,” and
20 explains: “Each city shall be included within an urban growth area.” Subsection (2)
21 addresses the sizing of UGAs. Based on population projections issued every ten years from
22 the office of financial management (OFM), counties and cities must plan “the areas and
23 densities” needed to accommodate that projected growth. RCW 36.70A.110(2). Subsection
24 (2) was amended by SHB 1825 in 2009 with an additional sentence requiring cities, “as part
25 of this planning process,” to “include areas sufficient to accommodate the broad range of
26 needs and uses that will accompany the projected urban growth, including, as appropriate,
27 medical, governmental, institutional, commercial, service, retail and other non-residential
28 uses.” Subsection (2) requires a county to consult with each of its cities concerning the initial
29 UGA location; if agreement is not reached, the county designates the UGA and must justify
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¹⁰⁶ The countywide planning policies, as has been noted above, “shall at a minimum address ... policies to implement RCW 36.70A.110 [UGA designations]” and policies for countywide economic development “which must include consideration of development of commercial and industrial facilities.” RCW 36.70A.210(3)(a),(g).

1 its decision in writing.¹⁰⁷ Subsection (6) requires each county to “include designations of
2 urban growth areas in its comprehensive plan.” RCW 36.70A.110(6).

3 The UGA provisions of RCW 36.70A.110 are further supported by **RCW 36.70A.115**,
4 requiring counties and cities to ensure that, “taken collectively,” their CPs and DRs and
5 amendments thereto “provide sufficient capacity of land suitable for development within their
6 jurisdictions” to accommodate allocated growth. This section was also amended by SHB
7 1825, adding: “including the accommodation of, as appropriate, the medical, governmental,
8 educational, institutional, commercial, and industrial facilities related to such growth.”
9

10 **RCW 36.70A.130(3)** requires urban growth area designations to be reviewed at least
11 every ten years. Notably, allowable densities are reviewed at the same time, to determine
12 whether higher densities in the urban area (as opposed to UGA expansion) might be
13 needed to accommodate growth.¹⁰⁸
14

15 For six counties including the four Central Puget Sound counties, the GMA adds a
16 “buildable lands review,” set forth in **RCW 36.70A.215**. Under the buildable lands program,
17 on a five-year cycle King County and its cities must review rural and urban development
18 trends. The purpose, according to RCW 36.70A.215(1) is to:

19 (a) Determine whether a county and its cities are achieving urban densities
20 within urban growth areas by comparing growth and development
21 assumptions, targets, and objectives contained in the countywide
22 planning policies and the county and city comprehensive plans with
23 actual growth and development that has occurred in the county and its
24 cities; and

25 (b) Identify reasonable measures, other than adjusting urban growth areas,
26 that will be taken to comply with the requirements of this chapter.
27 (emphasis added)

28 The buildable lands program “review(s) commercial, industrial and housing needs by type
29 and density range to determine the amount of land needed for commercial, industrial, and
30

31 ¹⁰⁷ This portion of RCW 36.70A.110(2) appears to apply to an initial UGA designation: “Within one year of July,
32 1990, each county ... shall begin consulting with each city...” However, both the Court in *Thurston County*,
164 Wn.2d at 348, and Commerce in WAC 365-196-310(3)(a) – (d) treat this process as applicable to
subsequent UGA amendments.

¹⁰⁸ RCW 36.70A.130(3)(a) and (b).

1 housing for the remainder of the twenty-year planning period.” RCW 36.70A.215(3)(c). The
2 buildable lands provisions, which explicitly require evaluation of need for commercial lands,
3 were not amended by SHB 1825.

4 Finally, under **RCW 36.70A.210(7)**, King County is a member of the Puget Sound
5 Regional Council and a party to the Multicounty Planning Policies, VISION 2040. VISION
6 2040 has adopted a “centers-based” strategy for accommodating urban growth in the
7 Central Puget Sound area. VISION 2040 classifies Snoqualmie among “Cities in Rural
8 Areas.” Such cities are to be the “primary places for meeting the service needs – including
9 shopping, jobs, and services – of residents and rural neighbors,” by clustering commerce in
10 compact town centers.¹⁰⁹ MPP-DP-16 provides:

12 Direct commercial, retail and community services that serve rural residents
13 into neighboring cities and existing activity centers to prevent the conversion
14 of rural lands into commercial uses. (emphasis added)

15
16 In the context of this statutory scheme, King County Ordinance 17486 adopted
17 revised CPP provisions for UGA expansion as follows:¹¹⁰

18 **DP-16:** Allow expansion of the Urban Growth Area only if at least one of the
19 following criteria is met:

- 20 a) A countywide analysis determines that the current Urban Growth Area is
21 insufficient in size and additional land is needed to accommodate the
22 housing and employment growth targets, including institutional and other
23 non-residential uses, and there are no other reasonable measures, such
24 as increasing density or rezoning existing urban land, that would avoid
25 the need to expand the Urban Growth Area; or
- 26 b) A proposed expansion of the UGA is accompanied by dedication of
27 permanent open space to the King County Open Space System, where
28 the acreage of the proposed open space
29 1) is at least four times the acreage of the land added to the UGA;
30 2) is contiguous with the Urban Growth Area with at least a portion of the
31 dedicated open space surrounding the proposed Urban Growth Area
32 expansion; and

¹⁰⁹ County Ex. 2, VISION 2040, pp. 24, 52.

¹¹⁰ Ordinance 17486, 2012 CPP, p. 21 (CO 008268 at DP-16(a)).

3) Preserves high quality habitat, critical areas, or unique features that contribute to the band of permanent open space along the edge of the Urban Growth Area; or

c) The area is currently a King County park being transferred to a city for purpose to be maintained as a park in perpetuity or is park land that has been owned by a city since 1994 and is less than thirty acres.

Statement of Facts

Snoqualmie is a small city beyond King County's contiguous urban area. Classified as a rural city in King County's planning hierarchy, Snoqualmie has four planned annexation areas in the UGA beyond its city limits.

Snoqualmie and its UGA boundary are separated from Interstate 90 at the Highway 18/Snoqualmie Parkway Interchange by an 85-acre rural area. In 2001, the City and King County jointly developed the Snoqualmie Urban Growth Area Subarea Plan.¹¹¹ The 2001 plan addressed the rural area at I-90/Snoqualmie Parkway and determined not to extend the UGA at that location for two reasons:

- The City's desire to focus retail in the downtown historic district rather than allowing competing business at the freeway interchange; and
- The commitment of both the City and King County to the Mountains to Sound Greenway to protect the scenic nature of the I-90 corridor.¹¹²

In 2007, King County completed its second Buildable Lands Report (BLR) as required by RCW 36.70A.215.¹¹³ King County's BLR is a collaborative effort of all 40 jurisdictions.¹¹⁴ The 2007 BLR demonstrated King County as a whole had more than double

¹¹¹ County Ex. 7, EY 000513.

¹¹² Snoqualmie Ex. 17, CollinsWoerman Study CO 010601, EY 000538-539. On remand for administrative fact finding, the Board found King County comprehensive plan policy T-316 provides: "King County shall support and encourage the preservation and enhancement of scenic, historic, and recreational resources along the designated Washington Scenic and Recreational Highways located in the county, including I-90 (Mountains to Sound Greenway)." ...CO 006743. The City of Snoqualmie 2006 Plan policy 2.C.7 provides: "Participate with the Mountains to Sound Greenway Trust . . . to protect the scenic nature of the I-90 corridor and the Upper Snoqualmie Valley." Remand Exhibit 14.

¹¹³ County Ex. 5. The next BLR is due in 2014.

¹¹⁴ *Id.* EY 000851.

1 the amount of urban land necessary to accommodate growth for the planning period
2 through 2022.¹¹⁵

3 In 2008, Snoqualmie requested King County to expand the UGA at I-90 for
4 development of a hospital. The UGA expansion was denied. The hospital is currently being
5 developed within existing Snoqualmie city limits.¹¹⁶

6 In 2009, the Legislature adopted SHB 1825, amending RCW 36.70A.110(2), .115,
7 and .210(3)(g) with respect to urban growth areas. Snoqualmie again sought a
8 comprehensive plan amendment to convert the land at the I-90 Interchange from rural to
9 urban – this time for retail development.¹¹⁷

12 **Positions of the Parties**

13 Snoqualmie asserts the 2009 amendments in SHB 1825 require King County to
14 amend its criteria for considering UGA expansions. Rather than solely a county-wide
15 assessment of adequacy of urban lands based on population and employment targets,
16 Snoqualmie contends the County is now required to respond to individual city analyses of
17 land capacity for “the broad range of needs and uses” that accompany such growth.¹¹⁸

19 Snoqualmie points out the 2012 County update to its CPPs provided the opportunity
20 for the County to revise its UGA expansion criteria. Snoqualmie city attorney Pat Anderson
21 raised the need to incorporate SHB 1825 in the CPP revisions at the outset of the GMPC
22 process, in a letter to County Executive Dow Constantine and the GMPC members.¹¹⁹ He
23 continued commenting in oral testimony and writing until November 12, 2012, shortly before
24 final CPP adoption.¹²⁰

26 The City argues that SHB 1825 requires the land capacity needs for each city to be
27 considered, including the institutional and non-residential uses associated with population
28 growth, in the UGA amendment process. The City was in favor of language in the first staff
29

30 ¹¹⁵ *Id.* EY 000853

31 ¹¹⁶ County Ex. 8, CO 010601.

32 ¹¹⁷ County Ex. 31, CO 007836.

¹¹⁸ Snoqualmie Opening Brief at 15.

¹¹⁹ Snoqualmie Ex. 5, EX 000073-74, letter Pat Anderson to GMPC members and County Executive Dow Constantine, June 10, 2010.

¹²⁰ Snoqualmie Ex. 6, SN 000013, email letter Pat Anderson to County Council Members, Nov. 12, 2012.

1 draft of the new CPP policy which required the county to address “institutional and other
2 non-residential uses as provided in RCW 36.70A.110(2)” in addition to housing and
3 employment growth.¹²¹ However, Snoqualmie objects to the adopted version of CPP policy
4 DP-16 because it calls for “county-wide analysis” of UGA land capacity based on need to
5 “accommodate the housing and employment growth targets, including institutional and other
6 non-residential uses.” Snoqualmie contends CPP policy DP-16 fails to comply with SHB
7 1825, which the City reads to require that “each city” provide sufficient land for non-
8 residential uses in addition to the accommodation of population and employment targets
9 which has guided prior UGA determinations. Finally, Snoqualmie asserts neither the 2012
10 Comprehensive Plan update nor the development regulations provide any reference at all to
11 SHB 1825.
12

13 King County responds that RCW 36.70A.115, as amended by SHB 1825, continues
14 to require a county-wide analysis of the sufficiency of the land, taken collectively, for
15 accommodating the OFM population forecast for the County.¹²² The County notes the SHB
16 1825 language for both RCW 36.70A.110(2) and .115 qualifies the lists of institutional and
17 non-residential uses to be considered with the words “as appropriate,” allowing the
18 amendments to be read in harmony with the GMA provisions requiring county-wide review.
19 The County argues the fundamental GMA principles of coordinating growth and reducing
20 sprawl would be undermined by Snoqualmie’s reading of SHB 1825 to allow each city to
21 decide unilaterally to expand the UGA for whatever non-residential uses it wants to
22 accommodate to serve its population.¹²³
23

24 Futurewise as Amicus disputes the City’s contention that SHB 1825 was intended to
25 allow expansion of UGAs at the behest of cities.¹²⁴ Rather, says Futurewise, the RCW
26 36.70A.110(2) amendment requires each city to explicitly identify areas within its existing
27 jurisdiction sufficient to accommodate the range of needs and uses that will accompany
28 urban growth. Such a reading places responsibility on each city to address inadequate
29
30

31 ¹²¹ Snoqualmie Opening Brief at 15-16, citing the draft policy then numbered DP-10, subsequently renumbered
32 DP-16.

¹²² County Response at 10.

¹²³ County Response at 13

¹²⁴ Futurewise Amicus, at 3.

1 capacity by adjusting densities or re-designation of lands within the city, according to
2 Futurewise.

3 4 **Discussion and Analysis**

5 ***Legal Issue 1 – Failure to Revise in response to SHB 1825 Amendments***¹²⁵

6 The question before the Board is whether King County was required to revise its
7 CPPs, CP and DRs in response to the 2009 legislative amendments to RCW 36.70A.110(2)
8 and, if so, whether the County's revisions comply with the statute as amended.

9 The Board's analysis is guided by the Court's reasoning in *Thurston County v.*
10 *WWGMHB*.¹²⁶ The *Thurston* decision addressed two key issues applicable here: revision of
11 comprehensive plans affected by new or amended GMA provisions, and sizing of UGAs. In
12 *Thurston County*, the Court established that a party may challenge a county's failure to
13 revise GMA planning documents "only with respect to those provisions that are directly
14 affected by new or recently amended GMA provisions."¹²⁷ The Court pointed out the "update
15 process 'provides the vehicle for bringing plans into compliance with recently enacted GMA
16 requirements and for recognizing changes in land-use or population.'"¹²⁸ Allowing a "failure
17 to revise" challenge "provides a means to ensure a comprehensive plan complies with
18 recent GMA amendments."¹²⁹ In the *Thurston County* case, the County had not modified its
19 rural density designations in its 2004 update although the law regarding the rural element
20 had changed in 1997. The Court found the Board had jurisdiction to review the challenge.¹³⁰

21 The Court's subsequent decision in *Gold Star Resorts* reiterated the rule and applied
22 it in a case concerning LAMIRD designations in the Whatcom County comprehensive plan
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27

28 ¹²⁵ Issue 1. "Do the challenged actions fail to be guided by GMA Goal 1, RCW 36.70A.020(1), Urban growth,
29 and fail to comply with RCW 36.70A.110(2) and applicable law by failing to address the requirement of RCW
30 36.70A.110(2) as amended by SHB 1825 that each city must have sufficient land capacity to accommodate
the broad range of non-residential uses that will accompany its projected urban growth?"

31 ¹²⁶ 164 Wn.2d 329, 190 P.3d 38 (2008).

32 ¹²⁷ *Id.* at 344

¹²⁸ *Id.* citing, *Gold Star Resorts, Inc. v. Futurewise*, 140 Wn.App. 378, 390, 166 P.3d 748 (2007), *aff'd* in part,
rev'd in part on other grounds, 167 Wn.2d 723, 222 P3d 791 (2009).

¹²⁹ *Thurston County*, 164 Wn.2d at 344.

¹³⁰ *Id.* at 346.

1 update.¹³¹ Whatcom County updated its comprehensive plan in 2005 without revising its
2 rural element to incorporate the 1997 legislative changes to the GMA rural provisions. The
3 Court noted: “the county conceded that it did not consider the statutory LAMIRD criteria . . .
4 and did not attempt to analyze the logical outer boundaries of the areas under RCW
5 36.70A.070(5)(d) [the 1997 legislative revision]. . . . Nor, by its own admission, did the
6 County use [the new criteria] to delineate areas of more intensive rural development.”¹³²
7

8 In contrast to Whatcom County in *Gold Star*, the Board finds that King County did not
9 ignore the legislative changes to the GMA when it updated its Countywide Planning
10 Policies. CPP DP-16 is King County’s revised framework policy governing UGA expansion.
11 It provides:

12 **DP-16:** Allow expansion of the Urban Growth Area only if at least one of the
13 following criteria is met:

- 14 a) A countywide analysis determines that the current Urban Growth Area is
15 insufficient in size and additional land is needed to accommodate the
16 housing and employment growth targets, including institutional and other
17 non-residential uses, and there are no other reasonable measures, such
18 as increasing density or rezoning existing urban land, that would avoid
19 the need to expand the Urban Growth Area; or
20 b) [Four-to-One Program] or
21 c) [Transfer of County park to city]

22 County consideration of the SHB 1825 provisions is evident in the record. DP-17 was
23 changed (former FW-1, Step 7) at the request of Pat Anderson by letter urging amendment
24 based on SHB 1825 to ensure development in an expanded UGA was not limited to
25 residential uses.¹³³ The staff report presenting CPP DP-16 to the County Council identifies
26 SHB 1825 as requiring the inclusion of institutional and other non-residential uses.¹³⁴ When
27

28
29 ¹³¹ *Gold Star Resorts, Inc. v. Futurewise*, 167 Wn.2d 723, 222 P3d 791 (2009). A LAMIRD is a “limited area of
30 more intensive rural development.”

31 ¹³² *Gold Star*, 167 Wn.2d at 736-737.

32 ¹³³ Snoqualmie Ex. 5, EX 000073.

¹³⁴ County Ex. 18, County Council Staff Report Oct. 29, 2012, CO 010995, n. 12. Other CPPs also incorporate
consideration of such uses: “**DP-2** Promote a pattern of compact development within the Urban Growth Area
that includes housing at a range of urban densities, commercial and industrial development, and other urban
facilities, including medical, governmental, institutional, and educational uses and parks and open space.”

1 the Board compares revised CPP policies DP-16 and DP-17 to the 2010 CPP Framework
2 Policy FW-1, Step 7, the Board finds the County's new CPP responds to SHB 1825 by

- 3 • including "institutional and other non-residential uses" in the capacity analysis,
- 4 • no longer excluding non-residential uses in the expanded UGA area, and
- 5 • no longer requiring a four-to-one open-space dedication as a condition of UGA
- 6 expansion.
- 7

8
9 Snoqualmie contends the County's revised policies are nevertheless non-compliant
10 because they do not expressly provide for "each city" to identify "areas sufficient" for the
11 "broad range of needs and uses" that accompany urban growth.

12 Again, *Thurston County* is instructive. The Court had before it a challenge to UGA
13 amendments expanding the UGA for Tenino by 298 acres and creating a UGA for Bucoda
14 with 74 developable acres. The Court noted "the changes to the two individual UGAs
15 modified the overall UGA size," and thus the UGA sizing as a whole was subject to
16 challenge.¹³⁵ In particular, the Court found Thurston County's UGA already provided a
17 county-wide land supply sufficient to accommodate the projected 20 years of growth with an
18 excess capacity of 38%.¹³⁶ The Court ruled the projected population growth for the county
19 limits the amount of land county-wide that may be designated as urban, holding: "[A]
20 county's UGA designation cannot exceed the amount of land necessary to accommodate
21 the urban growth projected by OFM, plus a reasonable land market supply factor."¹³⁷
22 The Board concludes, under this analysis, King County cannot review a city request for
23 UGA expansion, however modest, in isolation from a "county-wide analysis."
24
25
26
27

28 ¹³⁵ *Thurston County* at 347 (emphasis added).

29 ¹³⁶ The Court did not decide whether Thurston County used a 38% land market supply factor or if 38 percent
simply represents the excess supply of buildable residential land. 164 Wn.2d at 354.

30 ¹³⁷ *Id.* at 351. The Court explained one reason the GMA limits the sizing of UGAs is that otherwise rural sprawl
31 could abound. *Id.* at 336 (citing Brent D. Lloyd, *Accommodating Growth or Enabling Sprawl? The Role of*
32 *Population Growth Projections in Comprehensive Planning under the Washington State Growth Management*
Act, 36 Gonz. L. Rev. 73, 107-09 (2001)). The Court further noted that "[o]versized UGAs are perhaps the
most egregious affront to the fundamental GMA policy against urban sprawl, and it is this policy that the UGA
requirements more than any other substantive GMA mandate, are intended to further." *Id.* (quoting Lloyd, at
105.).

1 Snoqualmie contends otherwise, asserting SHB 1825 gives each city the prerogative
2 to identify uses it wants to support its population growth and the additional urban land
3 capacity it needs. Snoqualmie even suggests SHB 1825 amends the *Thurston County*
4 ruling. The Board declines to reach so far.¹³⁸ Rather, the Board finds the County's CPP
5 revision reasonably incorporates the SHB 1825 provision for consideration of a broad range
6 of non-residential uses, while reserving to the County the SHB 1825 authority to assess the
7 need for these uses "as appropriate" and the un-amended requirement to conduct a county-
8 wide analysis.
9

10 As the *Thurston County* Court demonstrated, the UGA provisions in the statute,
11 including now the SHB 1825 amendments, must be construed as a coherent whole. RCW
12 36.70A.110(2) requires designation of the UGA by the county to be "based on the growth
13 management population projection made for the county by OFM" and to include "areas and
14 densities" to accommodate that growth. The SHB 1825 amendment creates a specific
15 requirement for cities, "as part of this planning process," to analyze land capacity needed for
16 non-residential uses "as appropriate" to serve population growth. The county remains
17 responsible for establishing the UGA¹³⁹ and ensuring it is not over-sized as a whole.¹⁴⁰
18

19 RCW 36.70A.115 provides that cities and counties must ensure that "taken
20 collectively" their comprehensive plans, development regulations, and amendments "provide
21 sufficient capacity of developable lands within their jurisdictions" to accommodate projected
22 growth. In a parallel 1825 amendment, the provision now specifies: "including, as
23 appropriate, the medical, governmental, educational, institutional, commercial, and industrial
24 facilities related to such growth."
25

26 RCW 36.70A.215, the buildable lands section, requires King County and its cities to
27 monitor development patterns and take "reasonable measures" to ensure that urban growth
28

29
30 ¹³⁸ The Legislature is quite capable of amending the GMA in response to a Supreme Court decision it finds
31 problematic. The *Thurston County* decision in late 2008 was generally recognized as seminal by GMP
32 practitioners, yet neither of the Bill Reports for SHB 1825 references the *Thurston County* decision nor states
an intent to modify its holdings. Snoqualmie Ex. 2, SN 000040-42, House Bill Report SHB 1825; Futurewise
Amicus Ex. 1, Final Bill Report SHB 1825.

¹³⁹ RCW 36.70A.040(3)(c), RCW 36.70A.110 (2) and (6).

¹⁴⁰ *Thurston County*, 164 Wn.2d at 352.

1 occurs in existing urban areas and avoid expansion of UGAs. The buildable lands
2 provisions already mandate consideration of sufficiency of commercial lands by cities and
3 counties and were not amended by SHB 1825.

4 RCW 36.70A.130(3) requires each county to periodically review its UGA designations
5 and permitted urban densities. Each city is required to review, not the size of its UGA, but
6 the “densities permitted within its boundaries.” If more capacity is needed to accommodate
7 projected growth, both UGA and density revisions must be considered. The UGA update
8 provisions were not amended by SHB 1825.

9
10 Taken together, the GMA’s UGA provisions require each city to project its land
11 capacity for population and employment growth taking into consideration the need for
12 commercial, institutional and other facilities. The County and cities must attempt to
13 accommodate the projected growth, including non-residential uses, in the existing urban
14 area through density revisions or other “reasonable measures.” The County then adopts a
15 UGA which may not be over-sized as a whole. King County’s distillation of the statutory
16 requirement is CPP DP-16(a), allowing expansion of the UGA only if:

- 17
18
19 (a) A countywide analysis determines that the current Urban Growth Area is
20 insufficient in size and additional land is needed to accommodate the housing
21 and employment growth targets, including institutional and other non-residential
22 uses, and there are no other reasonable measures, such as increasing density
23 or rezoning existing urban land, that would avoid the need to expand the Urban
24 Growth Area.

25 King County’s determination that institutional and non-residential uses are a subset
26 of the commercial and industrial lands calculation, rather than additive, is supported by the
27 Commerce guidelines¹⁴¹ which provide at WAC 365-196-310(4)(a)(v):

28 When establishing an urban growth area, counties should designate
29 sufficient commercial and industrial land. Although no office of financial
30 management forecasts are available for industrial or commercial land needs,
31 counties and cities should use a county-wide employment forecast, available

32
¹⁴¹ Procedural criteria adopted by Commerce pursuant to RCW 36.70A.190(4)(b) and found at WAC 365-190
are merely advisory to cities and counties but “shall be considered” by the Board in making its determinations.
RCW 36.70A.320(3).

1 data on the current and projected local and regional economies, and local
2 demand for services driven by population growth. Counties and cities should
3 consider establishing a county-wide estimate of commercial and industrial
4 land needs to ensure consistency of local plans. (emphasis added)

5 At WAC 365-196-310(4)(a)(v) counties are advised to designate adequate
6 commercial and industrial lands by taking into consideration a) OFM county-wide
7 employment forecasts, b) available local and regional economic data, and c) “local demand
8 for services driven by population growth.” The Board notes the parallel SHB 1825
9 amendments of RCW 36.70A.115 and .210(3)(g). The RCW 36.70A.210(3)(g) amendment
10 specifies that the CPPs for economic development and employment “must include ...
11 commercial and industrial facilities.” The RCW 36.70A.115 amendment requires sufficient
12 land capacity county-wide to accommodate allocated housing and employment growth,
13 including “medical, governmental, educational, institutional, commercial and industrial
14 facilities related to such growth.” Thus land to meet local service needs and accommodate
15 non-residential facilities is included in the “employment growth” calculus with “commercial
16 and industrial lands.”

17
18 In sum, **the Board finds** King County’s revised CPPs properly incorporate the SHB
19 1825 provisions with the related GMA mandates:

- 20
- 21 • the County made changes no longer restricting UGA expansion to residential
22 development but allowing non-residential urban uses;
 - 23 • the County concluded SHB 1825 did not change the requirement for county-wide
24 assessment of land capacity;
 - 25 • the County incorporated “institutional and other non-residential uses” into its
26 urban growth calculus;
 - 27 • the County construed “as appropriate” in RCW 36.70A.110(2) and .115 as
28 requiring exercise of discretion, not mandated approval, in considering requests
29 for UGA expansion for local non-residential uses.

30 **The Board finds** CPP DP-16 is not clearly erroneous. Snoqualmie has failed to carry its
31 burden of proving the CPP revisions in Ordinance 17486 violate RCW 36.70A.110(2) as
32 amended by SHB 1825.

Turning to the Comprehensive Plan update adopted in Ordinance 17485, the Board
notes Snoqualmie has not identified any specific provision of the 2012 CP update which

1 requires revision as a result of SHB 1825, nor has the Board found any. Following King
2 County's 2007 Buildable Lands Review, a new set of housing and job growth allocations
3 were established, with each urban jurisdiction assigned a growth target based on land
4 capacity and other factors.¹⁴² The King County Growth Targets Update for the period 2006-
5 2031 was adopted by GMPC October 2009, ratified by cities in 2010, and incorporated in
6 the 2012 CP.¹⁴³ With the new targets, Comprehensive Plan policy U-102 states: "The Urban
7 Growth Area designations . . . include enough land to provide the capacity to accommodate
8 growth expected over the period 2006-2031."¹⁴⁴

10 The County asserts no amendments to its CPs are required by SHB 1825 as
11 Snoqualmie has not identified any policies needing revision. However, RCW 36.70A.130(1)
12 requires that periodic updates of comprehensive plans and development regulations include
13 "a finding that a review and evaluation has been made and identifying the revisions made or
14 that a revision was not needed and the reasons therefor."¹⁴⁵ In adopting the 2012 CP
15 Update, Attachment A to Ordinance 17485, King County performed the required update of
16 its comprehensive plan and included findings to that effect.¹⁴⁶ However, none of the
17 Ordinance findings acknowledge the SHB 1825 amendments, and the Board could find no
18 reference to the new legislative provisions in the relevant sections of the text or policies of
19 the updated Comprehensive Plan. Nor could the Board find reference to SHB 1825 in the
20 section of Ordinance 17485 titled Growth Targets and the Urban Growth Area and adopted
21 as Attachment F Technical Appendix D.¹⁴⁷

24
25 ¹⁴² The employment growth target encompasses land needed for commercial and industrial uses, now
26 expressly clarified under the Commerce guidelines to include the broad range of institutional and other non-
27 residential land uses associated with "local demand for services." WAC 365-196-310(4)(a)(v).

27 ¹⁴³ Attachment A to Ordinance 17485 at 2-9.

28 ¹⁴⁴ Attachment A to Ordinance 17485, at 2-3.

29 ¹⁴⁵ RCW 36.70A.130(1): "(a) ... [A] county or city shall take legislative action to review, and if needed, revise its
30 comprehensive land use plan and development regulations to ensure the plan and regulations comply with the
31 requirements of this chapter according to the deadlines in subsections (4) and (5) of this section.

32 (b) ... Legislative action means adoption of a resolution or ordinance following notice and a public hearing
indicating at a minimum, a finding that a review and evaluation has occurred and identifying the revisions
made, or that a revision was not needed and the reasons therefor."

¹⁴⁶ Ordinance 17485, Section 1. Findings, at 3-4.

¹⁴⁷ The Board looked for answers to such questions as:

- Are institutional and non-residential land uses in the urban area captured in the allocations for commercial/industrial lands or separately?

1 **The Board finds** the County must articulate how its existing comprehensive plan
2 policies and process comply with SHB 1825 or adopt revisions. The County's failure to
3 revise or explain in the 2012 CP update does not meet the requirements of RCW
4 36.70A.130(1)¹⁴⁸ as construed by the *Thurston County* court. The Board is left with a
5 definite and firm conviction that a mistake has been made.

6 The Board therefore **remands Ordinance 17485**, Attachment A, Introduction and
7 Chapters 1 and 2, and Attachment F, Technical Appendix D, to the County to take action to
8 comply with RCW 36.70A.130(1)(a) with respect to SHB 1825.

9 Finally, Snoqualmie argues that the County's development regulations as amended
10 by Ordinance 17485 fail to comply with SHB 1825 because the County holds to a four-year
11 cycle of urban growth area boundary review, rather than allowing annual changes in
12 response to city requests under RCW 36.70A.110(2).¹⁴⁹

13 Snoqualmie cites no authority for the proposition that UGA changes are required to
14 be considered annually under RCW 36.70A.110(2) or any other provision. Indeed, WAC
15 365-196-310(4)(e)(i) advises:

16 ... frequent, piecemeal expansion of the urban growth area should be
17 avoided. Site-specific proposals to expand the urban growth area should be
18 deferred until the next comprehensive review of the urban growth area.

19 **The Board finds** Snoqualmie has failed to demonstrate a violation of the GMA with
20 respect to the County's development regulations.

- 21
22
23
24
-
- 25 • Is each city's assessment of land capacity for non-residential uses to support population growth
 - 26 factored into its employment growth or population targets?
 - 27 • What reasonable measures are appropriate when past subdivisions, development agreements, and
 - 28 the like have left insufficient land capacity in a city for "local demand for services"?
 - 29 • How does the centers strategy of VISION 2040 and the King County CPPs align with each city's
 - 30 determination of areas sufficient for local non-residential uses related to population growth?
 - 31 • What is the process for ensuring all cities' assessments of land capacity per SHB 1825 are included in
 - 32 the County's UGA planning?

¹⁴⁸ Snoqualmie did not raise non-compliance with RCW 36.70A.130(1) as one of its legal issues and did not cite to that statute in its briefs or argument. However, the City explicitly relied on the "failure-to-revise" holdings of *Thurston County*, *Gold Star*, and *Skagit Surveyors*.

¹⁴⁹ Snoqualmie Opening Brief at 19, referencing Ordinance 17485, Section 8(B) and (C). Ordinance 17485, pp. 13 and 15. Snoqualmie at hearing argued development regulations should have been revised or inserted "in the vicinity of K.C.C. 20.18.170 and .180," the provisions for the Four-to-One Program. HOM Transcript pp. 14-15 and 88. The Board disregards this argument as it was not raised in Petitioner's Opening Brief.

1 **Legal Issue 4 – Four-to-One Program**¹⁵⁰

2 Snoqualmie states the County's "Four-to-One" provisions violate RCW 36.70A.110(2)
3 because they require the dedication of four acres of open space for each acre added to the
4 urban growth area. Snoqualmie asserts the CPPs, CP and DRs condition UGA expansion
5 on a mandatory Four-to-One open space dedication. Snoqualmie argues this violates the
6 County's responsibility to comply with RCW 36.70A.110(2) which requires designation of
7 UGAs to be based on land needed to accommodate projected growth.¹⁵¹
8

9 In its reply brief, Snoqualmie asserts it is not challenging the voluntary Four-to-One
10 program. Rather, it is challenging the County's denial of Snoqualmie's I-90 UGA expansion
11 request "because it impermissibly applied the four-to-one open space exaction as a
12 condition of entertaining Snoqualmie's UGA amendment proposal under the SHB 1825
13 criterion."¹⁵²
14

15 The County responds that its Four-to-One program is voluntary, not an exaction, and
16 has been upheld by the Board.¹⁵³ Further, according to the County, the revised CPPs make
17 clear that the UGA may be expanded without dedication of open space if "a countywide
18 analysis" shows there is insufficient land to accommodate growth, including associated non-
19 residential uses.¹⁵⁴ Thus there is no conflict with SHB 1825.
20

21 The Board notes the prior CPPs expressly conditioned UGA expansion on open
22 space dedication. "When future growth requires additional capacity beyond what exists in
23 the main Urban Area," Step 7 of CPP FW-1 provided:

- 24 (a) Rural land, excluding agriculturally zoned land, may be added to the
25 Urban Growth Area only in exchange for a dedication of permanent
26 open space... consist[ing] of a minimum of four acres of open space
27

28 ¹⁵⁰ Issue 4. "Do the challenged actions fail to comply with RCW 36.70A.110 because they require the
29 dedication of four acres of open space for each acre added to the urban growth area as a condition of the
30 County's complying with the GMA requirement that each city must have sufficient land capacity to
31 accommodate the broad range of non-residential uses that will accompany its projected urban growth?"

32 ¹⁵¹ Snoqualmie Opening Brief at 35-36.

¹⁵² Snoqualmie Reply, at 19.

¹⁵³ County Response at 31, citing *Vashon-Maury v. King Co.*, CPSGMHB Case No. 95-3-0008, Final Decision
and Order (Oct. 23, 1995), at 45-46 ("King County's Four to One Program is the type of innovative land use
management technique that the Act encourages. It therefore complies with the Act.")

¹⁵⁴ Ordinance 17486, 2012 CPP, p. 21 (CO 008268 at DP-16(a)).

1 dedicated for every one acre of land added to the Urban Growth
2 Area...(emphasis added)

3 Further, FW-1, Step 7 (d) limited development on UGA-added lands to residential
4 development, which precluded UGA expansion to accommodate institutional and non-
5 residential needs associated with population growth.
6

7 The 2012 CPP revision complies with the SHB 1825 amendments by changing the
8 FW – 1, Step 7 provisions. New CPP policy DP-16 unambiguously makes Four-to-One open
9 space dedication one of three alternative bases for UGA expansion.¹⁵⁵ Additionally, a list of
10 subsidiary criteria, formerly Step 7(b) through (l), have been revised in DP-17 and no longer
11 require UGA added land to be exclusively residential. Thus the CPPs have been revised to
12 allow capacity for non-residential uses associated with growth to be one basis for UGA
13 expansion, and the Four-to-One program to be an alternative basis.¹⁵⁶ Snoqualmie did not
14 identify, and the Board did not find, any Four-to-One language in the CP and DR update of
15 Ordinance 17485 that retains the prior requirement.
16

17 **The Board finds** Snoqualmie has not demonstrated the County's adoption of the
18 challenged Ordinances violates RCW 36.70A.110(2) by virtue of the Four-to-One program.
19 Legal Issue 4 is **dismissed**.
20

21 Conclusion

22 **The Board finds and concludes** the 2012 CPPs, in particular policies DP-16 and
23 DP-17, incorporate revisions consistent with the GMA amendments adopted in SHB 1825
24 and are not clearly erroneous. Snoqualmie's challenge to Ordinances 17486 and 17487 in
25 Legal Issue 1 is **dismissed**. However, inasmuch as the 2012 CP update in Ordinance
26 17485 lacks either a revision pursuant to SHB 1825 or an explanation why no revision is
27 needed, the Board **remands** Ordinance 17485 Attachment A, Introduction and Chapters 1
28
29

30 ¹⁵⁵ DP 16 – Expansion is allowed “only if at least one of the following criteria is met.”

31 ¹⁵⁶ Snoqualmie contends the County staff sought to extort a four-to-one contribution as a price for the I-90 UGA
32 expansion, and cites a comment appended to the Area Zoning Study. Snoqualmie Reply at 19, HOM
Transcript at 20. The Board notes if the Area Zoning Study concluded the I-90 UGA expansion request did not
meet the land capacity analysis criteria, staff might well have suggested the Four-to-One alternative. The
Board does not assume bad faith.

1 and 2, and Attachment F, Technical Appendix D, to the County to take action to comply with
2 the GMA as set forth above.

3 **The Board finds and concludes** the County's adoption of the challenged
4 Ordinances does not violate RCW 36.70A.110(2) by virtue of the Four-to-One program.
5 Legal Issue 4 is **dismissed**.
6

7 **SECTION 3 – I-90 UGA Expansion Denial and Invalidity**

8 **Legal Issues**

9
10 2. Does the recommendation of denial in Area Zoning Study conducted for
11 the proposed Snoqualmie Parkway – I-90 Urban Growth Area amendment as
12 a part of the King County Comprehensive Plan update process fail to comply
13 with RCW 36.70A.110(2) by not recognizing the requirement to designate
14 sufficient land capacity to accommodate the non-residential uses that will
15 accompany the projected urban growth for the City of Snoqualmie and not
16 being supported by the evidence in the record as to the insufficiency of the
land capacity in Snoqualmie's urban growth area to accommodate the broad
range of uses and needs that will accompany its projected urban growth?

17 8. Does the continued validity of the challenged actions as set forth above
18 substantially interfere with the fulfillment of the goals of chapter 36.70A
19 RCW?

20 **Applicable Law**

21 The County's decisions concerning UGA expansion must be consistent with RCW
22 36.70A.110(2) and RCW 36.70A.115 as amended by SHB1825 (language added by the
23 Amendments is underlined):
24

25 **RCW 36.70A.110(2)** Based on the growth management population
26 projection made for the county by the office of financial management, the
27 county and each city within the county shall include areas and densities
28 sufficient to permit the urban growth that is projected to occur in the county or
29 city for the succeeding twenty year period, except for those urban growth
30 areas contained exclusively within a national historical reserve. As part of
31 this planning process, each city within the county must include areas
32 sufficient to accommodate the broad range of needs and uses that will
accompany the projected urban growth including, as appropriate, medical,
governmental, institutional, commercial, service, retail and other
nonresidential uses. (emphasis added)

1 **RCW 36.70A.115** Counties and cities that are required or choose to plan
2 under RCW 36.70A.040 shall ensure that, taken collectively, adoption of and
3 amendments to their comprehensive plans and/or development regulations
4 provide sufficient capacity of land suitable for development within their
5 jurisdictions to accommodate their allocated housing and employment
6 growth, including the accommodation of, as appropriate, the medical,
7 governmental, educational, institutional, commercial, and industrial facilities
8 related to such growth, as adopted in the applicable countywide planning
9 policies and consistent with the twenty year population forecast from the
10 office of financial management. (emphasis added)

11 Thus in reviewing a city request for retail-related expansion, the County may consider
12 whether the expansion is “appropriate” on the basis of the facts and circumstances. **RCW**
13 **36.70A.3201** provides the Board must grant deference to the County’s choices within the
14 bounds of the requirements of the statute.¹⁵⁷

15 The City has requested an order of invalidity. Pursuant to **RCW 36.70A.302(1)**, an
16 order of invalidity is a discretionary remedy to be applied when the Board makes a finding of
17 noncompliance, issues an order of remand, and “includes in the final order a determination,
18 supported by findings of fact and conclusions of law, that the continued validity of part or
19 parts of the plan or regulation would substantially interfere with fulfillment of the goals of [the
20 GMA].”

21 Statement of Facts

22 Twenty years ago the City of Snoqualmie had a population of 1,500. The current
23 population is 11,000 and the 2026 population projected in King County’s plan is 14,070.¹⁵⁸
24 The City’s growth is attributable to the development of Snoqualmie Ridge, a master planned
25 development of former timberlands in two phases. Phase I was approved in 1995 and
26
27

28
29 ¹⁵⁷ RCW 36.70A.3201 provides, in relevant part: “In recognition of the broad range of discretion that may be
30 exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the
31 boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements
32 and goals of this chapter. Local comprehensive plans and development regulations require counties and cities
to balance priorities and options for action in full consideration of local circumstances. The legislature finds that
while this chapter requires local planning to take place within a framework of state goals and requirements, the
ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and
implementing a county's or city's future rests with that community.”

¹⁵⁸ Snoqualmie Ex. 3, EY 000604-605, Area Zoning Study.

1 commenced building in 1997. Phase II was approved in 2004 and is approximately 60%
2 built out.¹⁵⁹ The master plan agreements provided for some retail space, as well as a
3 business park on Snoqualmie Parkway which is not yet fully built out.¹⁶⁰

4 The requested UGA expansion is at the intersection of State Highway 18, where it
5 meets Snoqualmie Parkway, and Interstate 90. The eighty-five acres separating the city
6 limits from the freeway at this location are currently designated rural, with RA-5 zoning.¹⁶¹
7 Some of the rural land at the interchange was acquired for proposed UGA expansion to
8 accommodate a hospital which is now being built inside city limits. On remand for
9 administrative fact finding, the Board found:

- 11 • the hospital district operates administrative offices on a portion of the 20.85 acres
12 it owns in the requested UGA expansion area.¹⁶²
- 13 • Puget Western, Inc. owns 51.58 acres of the proposed UGA expansion site and
14 has selectively logged the site under R5-A zoning.¹⁶³

15 This land is now proposed for UGA expansion for retail uses. On remand the Board
16 determined the timber harvest and low-density rural development authorized by King County
17 has no bearing on the question whether Snoqualmie demonstrated a need for additional
18 urban growth area to accommodate commercial retail to serve its citizens.

19 The requested I-90 UGA is within the Mountains to Sound Greenway. The Mountains
20 to Sound Greenway is a non-governmental initiative to preserve and enhance the landscape
21 on both sides of the I-90 corridor from peak to peak and from the Puget Sound waterfront to
22 Elk Heights east of Cle Elum.¹⁶⁴ The Mountains to Sound Greenway Trust was formed in
23

24
25
26 ¹⁵⁹ Snoqualmie Ex. 17, CollinsWoerman Study, at CO 010598.

27 ¹⁶⁰ *Id.* CollinsWoerman indicates for Phase I: "Originally planned to be about 17 acres, the retail portion was
28 downsized to 11 acres through an amendment to the approved land use plan. As a result, most of the retail at
29 the Ridge only partially serves the resident population." For Phase II, the majority of the site is designated for
30 residential development.

¹⁶¹ Snoqualmie Ex. 3, Area Zoning Study, at EY 000602. RA-5 allows one home per five acres.

¹⁶² Under R5-A zoning, public agency office use is allowed as a conditional and/or unclassified use. Remand
31 Exhibit 13, Declaration of Rodger McCollum, Superintendent, King County Public Hospital District No.4,
32 August 12, 2014.

¹⁶³ Remand Exhibit 1, Puget Western Snoqualmie COHP Site Plan (July 22, 2013); Remand Exhibit 11, Puget
Western's Washington State Department of Natural Resources Forest Practices Permit (August 10, 2012).

¹⁶⁴ Remand Exhibit 6, Mountains to Sound Greenway: Twenty Years (2010).

1 1991 in an effort to ensure that scenic beauty, outdoor recreation, colorful pioneer history,
2 and natural resources along Interstate 90 would be sustainable and vital as the region
3 grew.¹⁶⁵

4 The Mountains to Sound Greenway designation does not itself impose any limitation
5 on development. Local governments in the corridor incorporate the Greenway vision into
6 their comprehensive plans and development regulations pursuant to their own processes
7 and authorities.¹⁶⁶ Both the County and Snoqualmie have documented commitments to the
8 Mountains to Sound Greenway vision and implementation.¹⁶⁷ On remand for administrative
9 fact finding, the Board determined the Greenway vision for scenic protection at I-90
10 interchanges was relevant to the County's review of the requested UGA expansion but was
11 of minor significance to the County's denial of the request.

12
13 Snoqualmie and owners of the rural property retained a consultant to determine
14 whether the City's corporate limits and existing UGA include sufficient suitable areas to
15 accommodate the full range of uses to serve the population growth projected over the 2012-
16 2032 period.¹⁶⁸ The CollinsWoerman Study provided a "retail leakage" analysis which
17 determined that only 27% of residents' retail and service needs were being met within city
18 limits,¹⁶⁹ as measured by comparing residents' *estimated* total retail spending *potential* with
19 actual retail spending within Snoqualmie.¹⁷⁰ Significantly, such studies cannot differentiate
20 between retail sales made to local residents versus those made to visitors to the city.¹⁷¹

21 The CollinsWoerman study states:

22
23
24 The retail leakage study should be used as a general foundation for
25 understanding [sic] big-picture economic conditions. It should not be used as
26 a justification for undertaking specific retail development without first taking
27

28
29 ¹⁶⁵ Remand Exhibit 4, Mountains to Sound Greenway: A Vision in Progress (1993).

30 ¹⁶⁶ See Remand Exhibit 10B, WSDOT Mountains to Sound Greenway Implementation Plan, Vol. 3, Roadside
Master Plan (May, 1997).

31 ¹⁶⁷ See generally, HOM Ex. 4; CollinsWoerman Study, CO 010601.

32 ¹⁶⁸ Snoqualmie Opening Brief at 22.

¹⁶⁹ Snoqualmie Ex. 17, CollinsWoerman Study, CO 010619-620

¹⁷⁰ The study methodology employed an estimate of what Snoqualmie households likely spent in one year,
based on household income levels. Ex. 17 at 20, CollinsWoerman Study, CO 010601

¹⁷¹ *Id.* at 29, CO 010618. See also *Id.* at 99, CO 010688.

1 into account the many additional factors that affect consumer spending and
2 market feasibility.¹⁷²

3 The City set a goal of capturing two-thirds of all City household spending and one-
4 fifth of auto retail spending.¹⁷³ During the hearing, the Board was told that there were no
5 benchmarks available to evaluate how much estimated potential spending should be
6 captured in order for a city to meet local needs for retail and services. CollinsWoerman
7 concluded that 35 acres would be needed to provide retail space capturing two-thirds of
8 retail leakage (excluding auto sales).¹⁷⁴

10 The CollinsWoerman Study found only 9.8 acres suitable for retail available within
11 city limits (total 4100 acres) and a deficit of 25.3 acres of suitable land in the city or existing
12 UGA to rezone for retail.¹⁷⁵ Much of the area around the historic Snoqualmie downtown is
13 within the floodway or floodplain of the Snoqualmie River, presenting constraints to more
14 intensive development. The consultant determined that Snoqualmie Ridge Phase I and II
15 “lack the capacity for larger retail spaces that could attract anchor tenants and provide a
16 wider mix of goods and services to serve the city and surrounding rural area.”¹⁷⁶ The study
17 concluded with a recommendation of UGA expansion for retail development at the I-90
18 Interchange.

20 In connection with King County’s Comprehensive Plan update, the City and property
21 owners submitted a docket request to expand the UGA at I-90/Snoqualmie Parkway for the
22 purpose of commercial development.¹⁷⁷ As required by the Comprehensive Plan,¹⁷⁸ county
23 staff produced an Area Zoning Study (September 2011). The Study recommended denial.¹⁷⁹
24 The County did not adopt the requested UGA expansion.

29 ¹⁷² *Id.* at 29, CO 010618.

30 ¹⁷³ *Id.* at 88, CO 010677.

31 ¹⁷⁴ *Id.* CO 010677-678.

32 ¹⁷⁵ *Id.* at 121, CO 010710.

¹⁷⁶ *Id.* at 9, CO 010598.

¹⁷⁷ County Ex. 30, CO 007836.

¹⁷⁸ RP-203, Attachment A to Ordinance 17485, at 1-8.

¹⁷⁹ Snoqualmie Ex. 3, EY 000602, Area Zoning Study

1 **Positions of the Parties**

2 Snoqualmie contends the SHB 1825 amended language of RCW 36.70A.110(2) is a
3 mandate to the County to grant UGA enlargement when a city presents evidence of lack of
4 land capacity for needed non-residential uses, with due consideration for reasonable
5 measures that might be taken to avoid expansion.¹⁸⁰ Snoqualmie asserts the Area Zoning
6 Study, as the County's rationale for denial, refuses to recognize the SHB 1825 criteria, is not
7 supported by evidence in the record, ignores the only evidence material to the decision, and
8 applies "political considerations" rather than "legitimate factors" in its analysis.¹⁸¹
9

10 The County responds that the City has not demonstrated its I-90 UGA expansion
11 proposal is appropriate as required by RCW 36.70A.110(2). Drawing facts from the City's
12 study, the County asserts there is sufficient land available in the City for the desired retail
13 services if reasonable measures are taken.¹⁸²
14

15 **Discussion and Analysis**

16 **Legal Issue 2 – Area Zoning Study**

17
18 It is well-settled that the Board's jurisdiction is strictly limited by statute. GMHB
19 jurisdiction is limited to the **legislative actions** of local governments that **adopt or amend**
20 comprehensive plans or development regulations. Staff reports and recommendations are
21 merely preliminary steps in the legislative decision-making process and are not local
22 legislative adoptions within the Board's purview.¹⁸³
23

24 The Area Zoning Study challenged in Snoqualmie's Legal Issue 2 is not an enactment
25 or adoption by King County. It is simply a staff report which does not amend the County's
26 plan. To the extent Legal Issue 2 seeks a decision that the Area Zoning Study itself violates
27 RCW 36.70A.110, Legal Issue 2 is dismissed.
28

29
30 ¹⁸⁰ Snoqualmie Opening Brief at 21.

31 ¹⁸¹ *Id.*

32 ¹⁸² County Response at 22-23.

¹⁸³ See *Open Frame v. City of Tukwila*, CPSGMHB Case No. 06-3-0028, Order of Dismissal (Nov. 17, 2006),
at 6-7; *Upper Green Valley Preservation Society v. King County*, CPSGMHB Case No. 98-3-0008c, Final
Decision and Order (July 29, 1998), at 10-12; *Fallgatter VI v. City of Sultan*, CPSGMHB Case No. 06-3-0017
Order on Motions (June 29, 2006) at 5-6.

1 To the extent Legal Issue 2 challenges the County's denial of the City's docket
2 request because it was based on non-compliant criteria, the Board will address the issue.
3 The Board's discussion must be prefaced with reference to the long-standing position of the
4 Boards from each GMA region that **denial** of a docket request is not an "adoption or
5 amendment" within the Board's jurisdictional purview.¹⁸⁴ However, the Board may review the
6 denial of a comprehensive plan amendment when by such a denial the jurisdiction fails to
7 fulfill an expressed, explicit mandate – either from the GMA or the jurisdiction's own
8 Comprehensive Plan.¹⁸⁵ Snoqualmie's assertion here is that the County has failed to fulfill
9 the express mandate of the 2009 legislative amendments to the GMA by denying the City's
10 UGA expansion request and by disregarding the evidence of the CollinsWoerman study on
11 which it is based.
12

13 The Board finds King County did not disregard the CollinsWoerman study but rather
14 disagreed with the consultant's and City's conclusions. The County cites to facts from
15 CollinsWoerman both in its Area Zoning Study and in its Response Brief but reaches a
16 different decision. The County relies on the following facts for its determination that the UGA
17 should not be expanded at I-90 as requested by the City:
18

- 19 • Snoqualmie previously insisted it needed the I-90 UGA expansion for a hospital
20 but is now building its hospital within City limits. According to the County, this
21 demonstrates the City "can and should satisfy its needs within its own city
22 limits."¹⁸⁶
23
24
25

26 ¹⁸⁴ *Bidwell v. City of Bellevue*, CPSGMHB Case No. 00-3-0009, Order on Motion (July 14, 2000)(No authority
27 to review a decision not to docket a plan amendment); *SR9/US2 LLC v. Snohomish County*, CPSGMHB Case
28 No. 08-3-0004 (Apr. 9, 2009)(Without a duty to amend, a decision to docket is within local jurisdiction's
29 discretion); *Leon Savaria v. Yakima County*, EWGMHB Case No. 11-1-0002, Order of Dismissal (2012)
30 (dismissing challenge to denial of application to de-designate agricultural land); *Concrete Nor'West v.*
31 *Whatcom County*, WWGMHB Case No. 12-2-0007, Final Decision and Order (Sept.25, 2012) at 11, 13 ("A
32 local government legislative body has the discretion to adopt or reject a particular proposed comprehensive
plan amendment in the absence of a GMA or comprehensive plan mandate.").

¹⁸⁵ See e.g. *Andrew Cainion v. City of Bainbridge Island*, CPSGMHB Case No. 10-3-0013, Order on Motion to
Dismiss (Jan.7, 2011), at 2; *Orchard Reach v. City of Fircrest*, CPSGMHB Case 06-3-0019, Order of Dismissal
(July 6, 2006), at 5; *Tacoma v. Pierce County*, CPSGMHB Case 99-3-0023c, Order of Dismissal (Mar. 10,
2000); *Port of Seattle v. Des Moines*, CPSGMHB Case 97-3-0014, Final Decision and Order (Aug. 13, 1997).

¹⁸⁶ County Response at 20, citing CollinsWoerman, CO 010601, 010613 and Area Zoning Study, EY 000603.

- Snoqualmie has downsized commercial areas or removed them from its inventory through development agreements in recent years. A City's change of mind about its planning priorities is not a valid basis for expanding its UGA, according to the County.¹⁸⁷
- The County's review of the CollinsWoerman Study identifies retail development opportunities in the Snoqualmie Ridge Neighborhood Retail Area and Snoqualmie Ridge Business Park. The County judges retail development in these areas would be consistent with the VISION 2040 concept for small cities.¹⁸⁸
- The County states no new retail uses have taken advantage of the opportunity for retail development at the Snoqualmie Ridge Business Park, suggesting lack of market demand for additional commercial land. For the County, this calls into question the "retail leakage" assumption that resident spending outside the city equates to a demand for more land for in-city stores.¹⁸⁹
- The County anticipates requests from other cities to change rural lands to urban for shopping centers along the urban edge if "retail leakage" is the UGA expansion criterion.¹⁹⁰
- A broad range of shopping opportunities and services are available to Snoqualmie residents in the adjacent city of North Bend or a few miles to the west in Issaquah.¹⁹¹
- The requested I-90 UGA is within the Mountains to Sound Greenway, a corridor along I-90 that is the focus of a major initiative to preserve the natural scenic beauty of the Western Cascades.¹⁹² After fact finding on remand, the Board determined this fact was of minor significance to the County's decision.

¹⁸⁷ County Response at 20-22, citing CollinsWoerman CO 010598, 010649, 010699-700.

¹⁸⁸ County Ex. 2, VISION 2040, at 51.

¹⁸⁹ County Response at 20, citing CollinsWoerman CO 010599; Area Zoning Study, EY 000604.

¹⁹⁰ Area Zoning Study EY 000605.

¹⁹¹ County Response at 13; County Ex. 13, Snoqualmie and North Bend zoning map, EY 000644.

¹⁹² HOM Ex. 4; Area Zoning Study, EY 000602.

- Locating retail uses at the requested I-90 UGA is likely to result in “highway-oriented commercial development such as fast food, motels and gas stations” to draw the travelling public rather than neighborhood-serving retail essentials.¹⁹³
- Locating retail services in an expanded UGA at I-90 requires conversion of rural land contrary to the “centers strategy” of VISION 2040 and the MPPs.¹⁹⁴

In sum, the County has considered whether expansion of the UGA to accommodate retail uses at the I-90 Interchange is appropriate, based on local circumstances, as indicated by the 2009 legislative amendments to RCW 36.70A.110(2) and .115. The County assessed the evidence in the CollinsWoerman report, with other evidence, and determined the Snoqualmie UGA is already sufficiently sized.

The Supreme Court has opined on the degree of deference the Board must accord to a County’s discretion in choosing and interpreting the evidence in the record. In *Kittitas County v. EWGMHB*,¹⁹⁵ the Court explained: “[B]oards must consider anecdotal evidence provided by counties and defer to local planning choices that are compliant with the GMA. It does not mean that Counties may point to any evidence and demand unbounded deference.” Here the County addresses much of the same evidence proffered by Snoqualmie. The County does not challenge the CollinsWoerman analysis of the proportion of consumer dollars spent outside City limits. Rather, the County finds the CollinsWoerman conclusion that the UGA is undersized and must be expanded at I-90 for commercial development is faulty. **The Board finds** the County’s analysis is supported by evidence in the record and its action is not clearly erroneous.

Several post-SHB 1825 Board decisions have wrestled with the question of whether land that has better characteristics for a desired economic purpose can be added to a UGA which is already oversized. In *Brodeur v. Benton County*,¹⁹⁶ the Eastern Board found non-compliant a proposed commercial/retail UGA extension that would link the City of West

¹⁹³ Area Zoning Study, EY 000602, 000605; County Response at 23, citing CollinsWoerman, CO 010601: uses such as retail and hotel benefit from freeway visibility and access.

¹⁹⁴ County Response at 17-19, citing County Ex. 2, VISION 2040. See MPP-DP-16.

¹⁹⁵ 172 Wn.2d 144, 156-157, 256 P.3d 1193 (2011).

¹⁹⁶ (West Richland UGA), EWGMHB Case No. 09-1-0010c, Final Decision and Order (Dec. 2, 2009).

1 Richland to a potential freeway interchange. The Board found no support in the record that
2 additional commercial land was needed when the existing UGA contained hundreds of
3 acres of vacant and under-developed land. In *Kittitas County Conservation v. Kittitas*
4 *County*,¹⁹⁷ the Eastern Board found a proposed commercial extension of the UGA to link to
5 the interstate and accommodate big-box stores was not supported in the record, where
6 ample vacant commercial land was already available in the UGA. In *DCCRG v. Douglas*
7 *County*,¹⁹⁸ the Eastern Board rejected and remanded the County's expansion of the UGA to
8 include 84 additional acres for commercial use.
9

10 In order to comply with the GMA and its stated duty, Douglas County is
11 required to ensure the East Wenatchee UGA is the appropriate size in
12 relationship to OFM population projections. As noted above, there is nothing
13 in the Record indicating Douglas County performed the necessary supporting
14 analysis, whether for residential or commercial land needs.¹⁹⁹

15 In *North Clover Creek v. Pierce County*,²⁰⁰ the Central Board found a net 50-acre
16 expansion of the Eatonville UGA to accommodate a hoped-for industrial center was non-
17 compliant. *North Clover Creek* took into consideration the 2009 GMA amendments requiring
18 city estimates of land sufficiency for non-residential uses. The Board pointed out the vacant
19 and undeveloped land already included in the Town and its associated UGA, concluding:
20

21 [I]f the Town or County find they have not planned adequately for all the non-
22 residential needs of the Eatonville UGA, the remedy is re-designation of
23 excess residential land for industrial or other uses, not incremental expansion
24 of the UGA....

25 Pierce County has more than enough capacity in its UGA county-wide (and
26 in Eatonville, specifically) to accommodate the OFM projected residential
27 population *and associated non-residential uses*. (emphasis added)²⁰¹

28 King County argues, based on the *North Clover Creek* reasoning:²⁰²
29

30 ¹⁹⁷ EWGMHB Case No. 07-1-0004c, Order on Compliance (May 26, 2010), at 17-24.

31 ¹⁹⁸ EWGMHB Case No. 09-1-0011, Final Decision and Order (Jan. 19, 2010).

32 ¹⁹⁹ *Id.* at 31

²⁰⁰ CPSGMHB Case No. 10-3-0003c, Final Decision and Order (August 2, 2010).

²⁰¹ *Id.* at 48

²⁰² County Response at 16, citing CollinsWoerman, CO 010691.

1 [W]hile Snoqualmie states that all of the land in its inventory is unworkable, in
2 part because the City seeks land “of maximum retail feasibility and
3 marketability”, *North Clover* and *Friends of Pierce Co.* tell us that the desire
4 for the perfect parcel is simply not a justification for moving a sufficiently
5 sized UGA.

6 *Friends of Pierce County v. Pierce County*²⁰³ also addressed the SHB 1825
7 amendments. The *Friends* challenged the City of Sumner’s effort to extend its UGA to
8 facilitate development of a major regional shopping center at a freeway interchange. Like
9 Snoqualmie, Sumner and its interchange property owners commissioned a market study
10 identifying a high level of “retail leakage” to regional malls in Auburn and South Hill; the
11 study pointed out the attractiveness of the proposed freeway location. The Board’s decision
12 in *Friends* hinged on the agricultural value of the lands proposed to be paved over by the
13 new mall and on the specific wording of Pierce County’s UGA provisions, requiring a finding
14 of non-compliance. The *Friends* ruling thus may be of limited application to the Snoqualmie
15 case, but it demonstrates that King County’s concern about the likelihood of incremental
16 UGA expansion requests based on “retail leakage” is not bare speculation.
17

18 **The Board finds** the County considered the information and analysis proffered by
19 the City, made its own analysis, and reached a different conclusion within the framework of
20 the GMA criteria. The County’s judgment is supported by facts in the record and by Board
21 case law. Snoqualmie has failed to carry its burden of proving the County’s denial of the I-
22 90 UGA expansion violated RCW 36.70A.110(2). Legal Issue 2 is **dismissed**.
23

24 The matter was remanded to the Board by the Superior Court of Thurston County,
25 Case No. 13-2-01841-9, for administrative fact finding upon the City’s presentation of
26 information about timber harvest and preparation for rural development on a part of the
27 property requested for UGA expansion. Upon review, the Board supplemented the record
28 and made additional findings of fact. The Board determined the new facts required some
29
30
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32

²⁰³ GMHB Case No 12-3-0002c, Final Decision and Order (July 9, 2012).

1 correction of the text of this order but provided no grounds for reversal or modification of the
2 Board's ruling on the merits.²⁰⁴

3
4 ***Legal Issue 8 – Invalidity***

5 The City contends the County's four-year UGA amendment cycle will deprive
6 Snoqualmie of the opportunity to expand at I-90 for another four years unless the Board, in
7 connection with a remand, also invalidates the County Ordinances. Snoqualmie asserts the
8 County's refusal to acknowledge the new city-by-city UGA expansion criteria of RCW
9 36.70A.110(2) thwarts GMA Planning Goal 1:
10

11 Urban Growth. Encourage development in urban areas where adequate
12 public facilities and services exist or can be provided in an efficient manner.

13 The County responds that Goal 1 is best served by siting shopping centers in existing
14 urban areas, not expanding into the rural area. The Board concurs. "Urban growth" does not
15 mean that urban areas should be expanded, as Snoqualmie asserts, but that development
16 should occur within existing urban areas: "Encourage development in urban areas."
17

18 **The Board finds** no basis here for invalidity. The limited remand to the County to
19 amend or clarify its comprehensive plan can be very short, and there is no identified risk of
20 activity in the interim that would thwart Goal 1. The request for an order of invalidity – Legal
21 Issue 8 – is **denied**.

22 **Conclusion**

23 **The Board finds and concludes** the County's action in denying the City's request
24 for I-90 UGA expansion was not clearly erroneous. Legal Issue 2 is **dismissed**.
25

26 Given the Board's ruling on Legal Issues 1 through 7, there is no basis for an order of
27 invalidity. Legal Issue 8 is **dismissed**.
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²⁰⁴ Order on Remand, Supplementing the Record, Making Findings of Fact, and Amending the Final Decision and Order, October 29, 2014.

IV. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, the Growth Management Act, prior Board Orders and case law, having considered the arguments of the parties, and having deliberated on the matter, the Board ORDERS:

1. Petitioner City of Snoqualmie has failed to carry its burden of demonstrating the County's adoption of Ordinance Nos. 17486 and 17487 violates RCW 36.70A.210, .040(3), .020(11), or .110(2). The challenges to Ordinance Nos. 17486 and 17487 are dismissed.
2. Ordinance No. 17485 fails to comply with RCW 36.70A.110(2) as amended by SHB 1825 because the 2012 CP update in Ordinance 17485 lacks either a revision pursuant to SHB 1825 or an explanation why no revision is needed as required by RCW 36.70A.130(1).
3. In all other respects the challenges to Ordinance No. 17485 are dismissed.
4. The Board remands Ordinance No. 17485 Attachment A, Introduction and Chapters 1 and 2, and Attachment F, Technical Appendix D, to the County to take the necessary action to achieve compliance as set forth in this Order within 90 days. The following schedule shall apply:

Item	Date Due
Compliance Due on identified area of noncompliance	November 12, 2013
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	November 26, 2013
Objections to a Finding of Compliance	December 10, 2013
Response to Objections	December 20, 2013
Compliance Hearing Location to be determined	January 9, 2014 10:00 a.m.

1 SO ORDERED this 29th day of October, 2014.

2
3
4 _____
Cheryl Pflug, Board Member

5
6
7 _____
Margaret Pageler, Board Member

8
9 _____
Unavailable for Signature

10 Charles Mosher, Board Member

11
12 **Note: This is a final decision and order of the Growth Management Hearings Board**
13 **issued pursuant to RCW 36.70A.300.²⁰⁵**
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30 _____
31 ²⁰⁵ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all
32 parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840.
A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days
as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent
upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings
Board is not authorized to provide legal advice.